

**ONTARIO PUBLIC SERVICE
LABOUR RELATIONS TRIBUNAL
DECISIONS**

INTEREST ARBITRATIONS

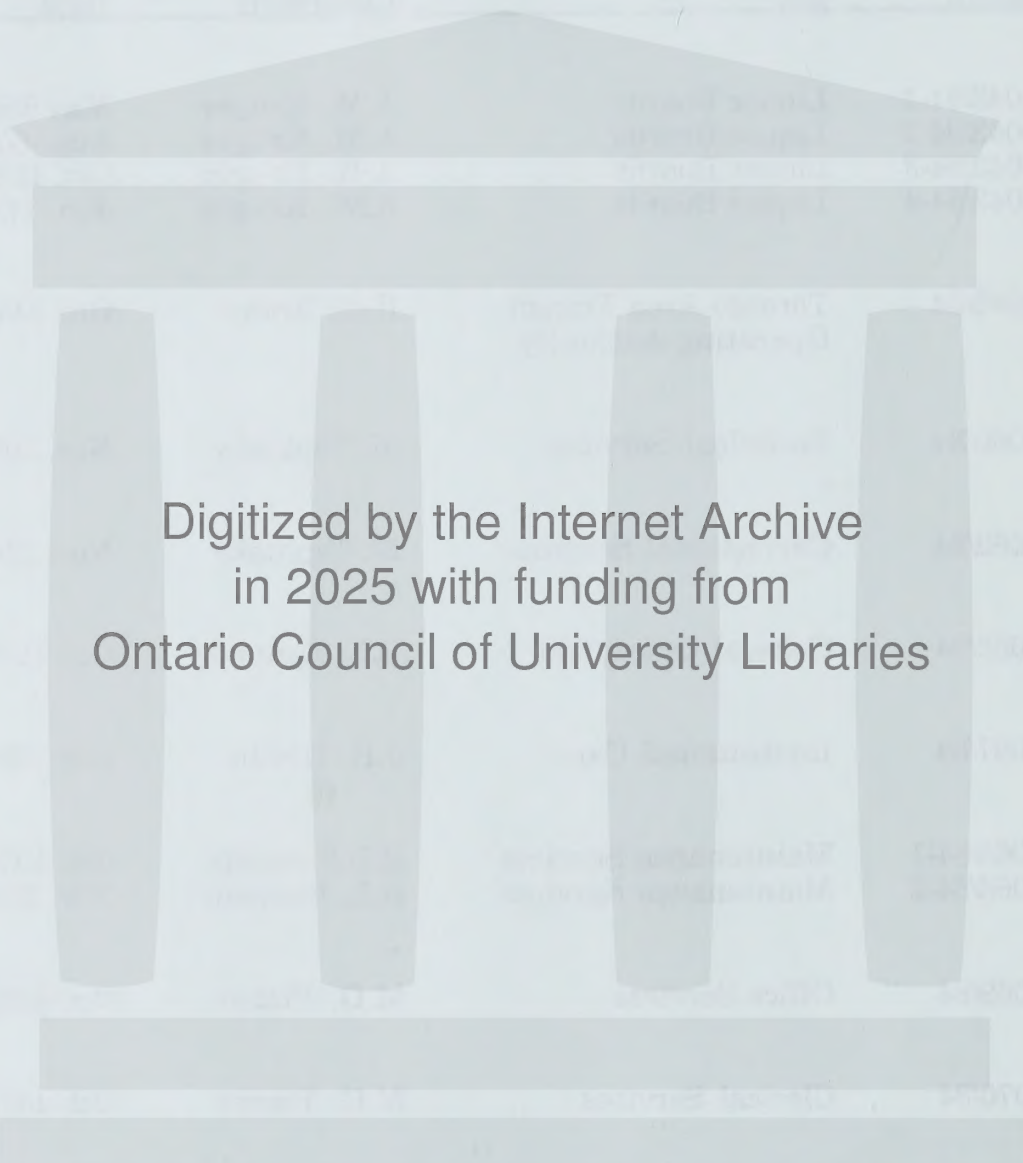
VOLUME 2

T/0041/84 - T/0087/84 (end 1984)

ONTARIO PUBLIC SERVICE LABOUR RELATIONS TRIBUNAL
INTEREST ARBITRATION DECISIONS VOLUME 2

T/0041/84 - T/0087/84 (1984 end)

File No.	Re:	Chairman	Date
T/0043/84-1	Liquor Boards	A.M. Kruger	May 6/85
T/0043/84-2	Liquor Boards	A.M. Kruger	Aug. 6/85
T/0043/84-3	Liquor Boards	A.M. Kruger	Oct. 18/85
T/0043/84-4	Liquor Boards	A.M. Kruger	Jan. 17/86
T/0048/84	Toronto Area Transit Operating Authority	H.D. Brown	Oct. 24/85
T/0060/84	Technical Services	M. Teplitsky	Nov. 20/85
T/0062/84	Correctional Services	M. Teplitsky	Nov. 27/85
T/0063/84	General Operations	R.L. Kennedy	Oct. 10/85
T/0067/84	Institutional Care	J.H. Devlin	Nov. 22/85
T/0068/84-1	Maintenance Services	R.L. Kennedy	Oct. 10/85
T/0068/84-2	Maintenance Services	R.L. Kennedy	Nov. 25/85
T/0069/84	Office Services	M.G. Picher	Oct. 4/85
T/0070/84	Clerical Services	M.G. Picher	Oct. 4/85
T/0072/84-1	Scientific and Professional	M. Teplitsky	Aug. 22/85
T/0072/84-2	Scientific and Professional	M. Teplitsky	Dec. 16/85



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<u>File No.</u>	<u>Re:</u>	<u>Chairman</u>	<u>Date</u>
T/0073/84	Administrative Services	M.G.Picher	Aug. 16/85
T/0074/84	Law Enforcement	V.E. Scott	Oct. 2/85
T/0087/84	Northern Affairs Officers	V.E. Scott	Nov. 12/85

17/11/84
T/0043/84-1

IN THE MATTER OF AN ARBITRATION

UNDER THE

CROWN EMPLOYEES COLLECTIVE BARGAINING ACT

B E T W E E N:

THE LIQUOR CONTROL BOARD OF ONTARIO
AND THE LIQUOR LICENCE BOARD OF ONTARIO
(hereinafter called the Employer)

- AND -

THE ONTARIO LIQUOR BOARD EMPLOYEES' UNION
(hereinafter called the Union)

THE BOARD OF ARBITRATION:

Professor A. M. Kruger	- Chairman
Mr. P. Camp	- Member
Mr. S. O'Flynn	- Member

APPEARANCES:

For the Employer:	Mr. R. J. Drmaj and others
For the Union:	Mr. M. Levinson and others

HEARINGS AT TORONTO, ONTARIO, MARCH 5 AND 6, 1985

At the outset of our hearings we were informed that the parties had agreed on a number of matters which are found in item 5 of the Exhibits presented by the Employer. At the request of the parties we order that these changes be incorporated in the new agreement.

We were also told that the parties had agreed that our Award be incorporated in a one year agreement with a term from July 1, 1984 through June 30, 1985. We so order.

The matters that remain for this Board to resolve can be grouped under the following three headings and our Award will be organized in this way:-

Non-Monetary Issues

Issues Unique to Part-Time Staff

Monetary Issues

I. NON-MONETARY ITEMS

1. Time Off For Union Business

The Union seeks a number of changes in Article 1 of the current agreement.

The present version of clauses 1.5 and 1.6 reads as follows:-

1.5 Upon notification to and with the approval of the Boards, zone representatives shall be entitled to be absent from work up to a maximum of ten (10) working days per annum to attend to their duties without loss of regular pay, vacation credits or regular days off.

1.6 The Boards further agree to recognize a steward of the Union in each of the Board's warehouses and three (3) stewards per zone in each of the zones referred to in Article 1.4. The function of the steward shall be to serve as the official spokesman for employees of the

warehouses and stores represented. The steward shall not be entitled to time off to conduct Union business as allowed in Article 1.5.

The Union seeks to delete the last sentence in Article 1.6 and thereby make stewards eligible for time off to process grievances.

Furthermore, the Union wishes to amend Article 1.5 so that rather than assign to each zone representative up to ten days a year for union business, the Union would have a pool of days to allocate to zone representatives and stewards.

Finally the Union seeks to expand its Negotiating Team to five (5) members and to provide for paid leave for these people not only for engaging in the actual negotiations but for participating in the preparation of the Union's contract demands and its bargaining strategy.

The Employer acknowledges the need to recognize the role of stewards but opposes the granting of paid time off for stewards processing grievances. The Employer also supports the notion of a pool of days off for zone representatives as more efficient than the current system. Finally the Employer agrees to amend Article 1 so that the Negotiating Committee will receive some paid time off for "attending meetings in preparation for negotiations." All of these changes are incorporated in a larger package of changes the Employer has proposed on pages 32 - 34 of the Employer's Brief.

This Board has considered these matters. We conclude that Article 1 be amended as follows:-

Article 1.5 shall provide for a pool of 360 paid days per

annum rather than the current arrangement which provides for a maximum of 10 days per zone representative. No steward or zone representative shall be entitled to draw more than 20 days per annum from the pool.

Article 1.6 shall provide for access for stewards to the pool referred to in our amended version of Article 1.5.

Article 1.7 shall be amended to provide for a pool of 120 days of paid leave per annum to be available to union members involved in the preparation of the Union's bargaining position and for the negotiation of the agreement.

The Union bargaining team shall consist of not more than five employees.

2. Article 5 - Hours of Work and Overtime

At the hearing the parties agreed to abandon their proposals for changes in Article 5 and to maintain the status quo during the term of this contract.

Articles 10 and 11

The Employer has proposed changes replacing these two clauses with a single provision entitled Article 10 Termination Payments. It appears in Tab 6 of the employer's exhibits.

At the hearing, counsel for the Union informed us that the Union accepts these changes.

This Board orders that these changes in these clauses proposed by the Employer be incorporated in the new collective

agreement.

Article 14 - Court Witness

The Employer has asked to amend this provision so that employees subpoenaed to appear as witnesses in any proceeding other than in a court of law would not be paid for the time lost from work. This would change the current practice which is to pay employees for time spent as witnesses at arbitration hearings or at other administrative tribunals.

We conclude that no change be made in the current provisions of Article 14.

Article 16 - Assignments and Job Postings

At the hearing the parties informed us that they had agreed to withdraw their requests for changes in section 16.3(a) and 16.9(a) and (b). This Board accepted their decision to leave those provisions unchanged.

The Union has requested amendments to the current clause, 16.5(d). The Employer has challenged our jurisdiction to deal with this matter. This issue is now before the Tribunal. This Board will remain seized of this matter in the event that the Tribunal finds that we have jurisdiction.

The Board asked us to make a significant change in Article 16.6(a). That clause now states:-

(ii) 16.6 (a)

Present clause

Where employees are being considered for promotion, length of service from appointment date will be the determining factor provided the employee is qualified to perform the job.

What is proposed as a substitute is the following:-

Board proposal

16.6 (a) Where employees are being considered for promotion, the Boards shall give primary consideration to qualifications and ability to perform the work. Where, in the opinion of the Boards, two (2) or more employees are relatively equal in qualifications and ability, seniority shall be a consideration.

The Union takes strong objection to this proposal.

We conclude that without further evidence of problems encountered by the Employer, no change is warranted in this provision.

We also received a request from the Employer to delete Article 16.11 which provides that:-

S. 16.11

Present clause

Where a bargaining unit employee accepts a position with the Board outside the bargaining unit, and subsequently returns to the bargaining unit, his seniority for promotional purposes shall not accumulate during such time as that employee is outside of the bargaining unit.

This change is opposed by the Union.

We have considered this matter and we order that on promotion outside the bargaining unit seniority shall accumulate to a maximum of five years.

NEW ARTICLE - PERSONNEL FILES

The Union has requested a new article that would have three purposes:-

- a) to open personnel files to inspection by employees and the Union under certain conditions.
- b) to provide employees with copies of any documents related to possible disciplinary procedures at the time they are added to a personnel file.
- and, c) to purge these files of any documents related to discipline after one year unless the same offence recurs in that period.

The Employer does not appear to object to item a) above and told the Board this is the current practice. However, the employer feels that item b) is too sweeping in its scope and that item c) is unwise.

This Board order that:

- i) The Union's request for access to personnel files be incorporated in the new agreement.
- ii) We reject the request that copies of documents added to files be provided to employees.
- iii) We accept in principle proposal c) on page 55 of the Union's Brief but we order that such documents be available for consideration by the Employer for three (3) years rather than one year.

NEW ARTICLE - SENIORITY

The Employer asked us to include in the new agreement the following definition of seniority:-

"Unless otherwise specified in this Agreement, an

employee's seniority will accumulate upon completion of a probationary period of not less than six (6) months and will be calculated from his first day of work at his most recent appointment to the permanent full-time staff of the Boards."

It is our decision that this provision be included in the new agreement but applicable only to full time employees. It would require changes in some other provisions of the Agreement as indicated in the Employee's Brief on page 50.

NEW ARTICLE - JOB SECURITY

The Union seeks a new article to provide for greater job security for its members.

The Board received two versions of this proposal, one in Tab 6 of the Employer's Exhibits and the other in the Union's Brief pages 50 to 53.

In response, the employer argued that it would be wrong to introduce these changes. Article 16 already provided for job protection. There had never been a layoff by the employer and none was anticipated during the brief life of this Agreement.

We conclude that the parties should continue to negotiate this issue with a view to reaching an understanding that would be incorporated in their next collective agreement.

II. PART-TIME EMPLOYEES

The Union has requested a new article 1.1(b) which would define a temporary employee and a part-time cashier. The Employer has challenged the jurisdiction of this Board in this matter. The

jurisdictional question is now before the Tribunal. Until the Tribunal rules on this matter, this Board will not comment further on this issue. We remain seized of the matter in the event the Tribunal rules that we have jurisdiction.

So as to avoid repetition, we note at the outset that the Employee's position is that none of the Union's requests for changes affecting temporary and part-time employees should ~~not~~ be granted at this time. The employer agrees that some changes are required. The matter, in the Employer's view, requires more study and discussion between the parties and should be dealt with in the upcoming negotiations on a new agreement.

ARTICLE 26

The Union seeks changes in this clause to provide greater assurance that full-time position will not be eroded by the lure of more part-time staff.

This Board concludes that the current provision remain in effect with the following addition:-

"The Boards agree to supply the Union, monthly, with the names and dates of termination of any full time employees in the bargaining unit."

ARTICLE 30

The Union has proposed additions to the current Article 30 which are intended to provide for seniority lists with associated privileges (in lay-off, recall and so on) for part-time and

temporary staff.

NEW CLAUSE

A new clause has been proposed by the Union dealing with the rights of part-time employees who apply for full-time positions and who are successful in securing such positions.

This Board is satisfied that it would be desirable to define seniority for part-time and temporary employees and to use seniority to provide for some privileges in job opportunities based on seniority.

The matter is complex and we would prefer that the parties work this out if possible. Accordingly, we order that negotiations resume as soon as possible on these matters. The parties shall report to this Board no later than twelve o'clock noon, on May 31, 1985 concerning their progress in resolving these issues. In the event that some issues are outstanding at that time, the report to the Board shall include the respective positions of the parties.

This Board shall remained seized of these matters in the event that the parties are unable to agree by noon on May 31, 1985.

BENEFITS FOR PART-TIME AND TEMPORARY STAFF

Currently part-time and temporary employees receive a special payment in lieu of benefits and holiday pay under article 30.2(a). The Union does not seek to alter this arrangement at this time. What the Union has asked for is that on a voluntary basis part-time and seasonal employees be permitted to join the Group Life

Insurance, ^{Long}~~lay~~ Term Disability Insurance, Supplementary Health and Hospitalization and Dental Insurance Plans. The employees who elect to enrol would pay the entire premium cost.

The Employer opposes this proposal on the grounds that it would create serious administrative problems.

We conclude that no changes in current arrangements are warranted at this time.

III. WAGE AND BENEFIT DEMANDS

We received different wage demands for part-time, temporary and full time employees.

In addition, we received a request for a change in the current Dental Plan provided for in article 15.7. We have included this item in the portion of our Award that deals with wages because it would add to the Employer's cost of employing the members of this Union.

THE DENTAL PLAN

At present benefits under this plan are based on the Ontario Dental Association 1983 fee schedule.

The Employee has offered to improve this by using the 1984 ODA schedule effective on the first day of the month immediately following the date of this Award.

What the Union seeks is that the Article 15.7 be amended to provide that benefits automatically change whenever the ODA fee schedule is amended.

It is the Employer's view that no change in benefits (with

associated costs) should occur without negotiation.

We rule that effective May 1, 1985, the 1985 O. D. A. fee schedule be used instead of the 1983 O. D. A. schedule mentioned in Article 15.7.

WAGE RATES - FULL TIME EMPLOYEES

The Union has based its case for a significant wage increase on a comparison between rates for its members and those paid by the Brewers Warehouse for what is arguably comparable work. A job evaluation expert found that if anything the positions compared would justify a higher rate for employees of this Employer. It is the Union's position that a long standing link between the rates paid by these two employers was upset by the AIB rollback of an arbitration award concerning this Employer while Brewery rates escaped the controls and later by a rollback under Bill 179 that did not affect Brewery workers.

As for the requirement that arbitrators consider ability to pay, the Union points to the enormous profits of this Employer.

The Union requested a 15% increase for these employees retroactive to July 1, 1984. That would still leave a considerable gap between what these workers received as compared with their better paid counterparts in the Brewers' Warehouse.

The Employer asked the Board to look at the Teplitzky Award for this same group dated April 4, 1979. That Board rejected the Union's argument of an historical link between the wages of employees of these two employers.

These employees had had their jobs evaluated in 1978 by Price Waterhouse and that was still the appropriate leases for company jobs.

Furthermore, in a period of restraint one had to give overriding consideration to the ability to pay in the public sector as a whole. The fact that these particular employees worked in a money making division of the public sector was irrelevant.

The Employer argues that his offer of an increase of 4.7% is well above the recent increases in agreement in the private sector. It is also somewhat higher than the rise in cost of living in the first half of 1984. These employees earn more than comparable workers in Ontario's wine stores. If one looks at wages in liquor stores across Canada, with this increase, these employees will continue to enjoy earnings that comparable very favourably to those paid in other provinces.

The parties are agreed that whatever we award be retroactive to July 1, 1984.

The Board was faced with a very difficult task of deciding on this matter because the parties, relying on very different arguments, were so far apart in their positions. It is our view that the wages of all full time employees in this bargaining unit be increased by 5% retroactive to July 1, 1984

WAGE INCREASES - PART TIME EMPLOYEES

The Union seeks to eliminate the 50 cent an hour gap between temporary warehouse employees and temporary store employees by

granting a 50 cent per hour increase to the warehouse employees prior to the percent increase discussed below. In the Union's view there is no justification for the 50 cent per hour differential.

The Union also seeks a 20% increase for all temporary and part-time staff except for the part time cashiers for whom the Union has asked for a 15% increase. This would still leave their wages behind those paid to full-time workers during comparable jobs, if we awarded the full-time staff the 15% increase requested by the Union.

In the Union's view, there is no justification for paying temporary or part-time employees less than full-time workers when the work performed is identical.

The Employer's position is that the work performed is not identical. Part-time staff ususally are called on to perform a more limited range of duties than full-time employees.

The Employer has offered an increase of 4.7% to these employees, which is identical to its offer to full-time staff.

It is agreed that whatever increase an award be retroactive to July 1, 1984.

We have considered both of these issues carefully. As for the request for 50 cents per hour for temporary warehouse employees, it is our decision that this be granted effective May 1, 1985.

We have considered the matter of the appropriate increase for all temporary and part-time staff. We order that cashiers receive an increase of 5% retroactive to July 1, 1984. All other part-time and temporary employees shall receive an increase of 5% retroactive

to July 1, 1984 and a further increase of 5% effective May 1, 1985.

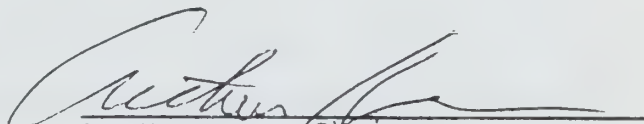
IMPLEMENTATION AND RETROACTIVITY

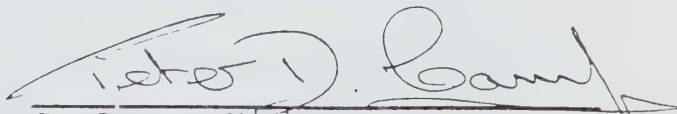
We order that except for those changes where we have stipulated an effective date, all changes we have ordered should come into effect on the date of this Award.

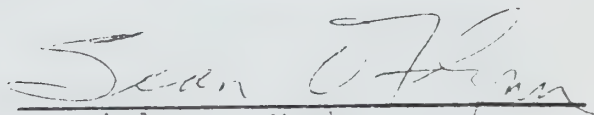
Retroactive salary increase shall be paid in respect of all work done within the bargaining unit since July 1, 1984. Employees who have terminated since July 1, 1984 should be contacted at their last known address and provided with thirty (30) days to claim their retroactive earnings.

In the event the parties experience any difficulties in implementing this Award, this Board shall remain seized for a period of thirty (30) days from the date of this Award. We remain seized of the two matters now before the Tribunal for an indefinite period. As for the issues related to seniority for part time and temporary employees, this Board remains seized in the event that these matters are not resolved by May 31, 1985.

DATED at Toronto, Ontario this ^{16th} ~~17th~~ day of ~~April~~, 1985.


A. Kruger - Chairman


P. Camp - Member


S. O'Flynn - Member

I concur/~~I dissent~~/
* Addendum attached

I concur/I dissent/
~~Addendum attached~~

ARBITRATION BETWEEN LCBO/LLBO

AND

THE ONTARIO LIQUOR BOARDS EMPLOYEES' UNION

Dissent

Arbitration is at best a poor instrument for the resolution of unresolved issues in contract negotiations. As an institution or mechanism, it has been seminared, conferenced, panelled, dialogued, studied and published to the point where to say something new about it is a mark of genius. It should have been pronounced dead a long time ago, but it lingers on with all the maddening persistence of the dandelion in the garden lawn.

Public sector workers hoped that the Canadian Charter of Rights and Freedoms would deliver the death blow to compulsory arbitration for all but truly essential service employees. They reasoned that, since doctors in the Province of Ontario were allowed to withdraw their services, few if any bargaining unit employees could possibly be defined as providing essential services. Unions challenged the constitutionality of the Ontario Government's Inflation Restraint Act and were encouraged by the decision of Justices Galligan, O'Leary and Smith in the Divisional Court of the Supreme Court of Ontario. With one voice, and in words and phrases that rang out clearly without any hint of equivocation, the judges declared that Freedom of Association, as guaranteed by the Charter, meant that workers had the right to organize, to bargain collectively, and to strike. That victory for working people turned out to be illusory, or at best premature, as courts in other Provinces poured scorn on the decision of the Ontario Divisonal Court. When the Ontario decision was appealed, the

Appeal Court of Ontario avoided the problem of defining freedom of association with a show of stick handling that would do credit to a Gretzky.

So, the struggle to win full collective bargaining rights for public sector workers continues. It seems that workers must claim by themselves and for themselves, their basic collective bargaining rights; rather than wait for the courts to hand them their rights on a platter.

Unfortunately that's the world as it is, and the world as it could and should be lies in the future. We are stuck with compulsory arbitration as the only legal instrument available for the resolution of unresolved issues in contract negotiations. With this we arrive at this compulsory arbitration hearing.

The last collective agreement expired on June 30th 1984. The Liquor Board of Ontario (LCBO) employs approximately 3,000 full time and 2,000 temporary and part time employees. About 110 of their employees work for the Liquor Licence Board of Ontario. Very few issues were resolved in direct negotiations between the parties, and all of the major issues were referred to this Arbitration Board.

The Issues

1. Part time and temporary employees.
 - (a) The Union requested a wage increase that would narrow the gap between these employees and full time employees who essentially do similar work.
 - (b) The Union requested language in the contract that would give these employees the right to claim available work on the basis of their seniority.
2. Job security and lay off provisions.

3. The Union requested that the gap between full time employees at LCBO and Brewers Warehousing Company (BWC) be reduced. Presently BWC employees receive over \$4,500 more than the LCBO employees, and a new contract has been signed at BWC since the hearings before this Arbitration Board ended making the gap even greater.

Compulsory Arbitration is an invitation to both parties not to take the responsibility for making decisions. (We are not responsible, blame the Arbitration Board - it's their decision). Since the union is usually trying to change the status quo, it is inclined to change its position and to seek compromises, and not to accept the invitation to irresponsibility. The Employer, who is seeking to take away some benefits already in the contract or maintain the status quo, stonewalls and accepts with alacrity the invitation to irresponsibility with the result that the union ends up negotiating with itself. That's what occurred in this case. The Employer refused to make any counter proposals or accept union proposals on any of the major issues. The Employer urged the Arbitration Board not to tackle the issue of part time/temporary workers or the job security issue and relied on the provisions of Bill 111 to urge this Board not to consider the union's claim for comparability with BWC employees.

Given this situation an Arbitration Board is faced with a major problem. How is it to grapple with such complicated issues when it is so far removed from the workplace? The temptation is for the Board to say "a plague on both your houses; throw up its hands at the size of the problem it is faced with and deal only with the simple issues. This Board, to its credit, refused to take the easy way out.

Part time and Temporary Employees

The Board directed the parties to meet and bargain to resolve the issues related to the rights of part-time/temporary employees. This Board remains seized with items not resolved by May 31st 1985 through negotiations between the parties. The Board also reduced the wage gap between part time/temporary and full time employees. I congratulate this Board for recognizing the importance of this issue and for grappling with it. Part time work is fast becoming a way of life for vast numbers of people. With unemployment sticking at the unconscionable level of over 11% many people take part-time work only because they cannot find full-time employment. It is now vital that part time, and so called temporary workers, enjoy pro rated benefits including the benefits that go hand in hand with seniority. They are not working for fun. The vast majority of them need the money and the benefits to keep themselves and their families. Such employees must be able to claim work when it is available. Part time/temporary employees can presently be dismissed for cause, or for no cause greater than the unreasonable preference of the local manager, and such decisions are not subject to review in arbitration. Employees in such circumstances cannot work in the dignity that is appropriate for human beings.

Job Security

Given the size of the problems this Board was faced with, I concur with the decision of the Board as outlined on page 8 of the majority decision.

Rates for Full Time Employees

The Crown Employees' Collective Bargaining Act sets the legal framework for LCBO contract negotiations. Section 12(2) of CECBA directs

an Arbitration Board to take into account many factors including "the conditions of employment in similar occupations outside the public service..." 12(2)(b). In many cases it is difficult, if not impossible, to find "similar occupations outside the public service". But that general statement does not apply with regard to liquor store employees. The Union in its excellent brief pointed to employees of the BWC as a near perfect "similar occupation". The BWC employs 1,500 full time employees in 401 retail outlets. The Union presented this Board with a comparative job study of employees in both LCBO and BWC. The duties, responsibilities, and wages of employees in both enterprises were compared. The study concluded that although the work in the LCBO was more complex the employees in BWC were paid over \$4,500 more than those in the LCBO. The additional complexity of the work at the LCBO can best be captured by this quote from the union's brief.

"LCBO employees handle a much wider variety of products than is the case at Brewers Warehousing Company. Store employees in the LCBO sell and handle approximately 1,420 types of wines and 860 types of liquors. Contrasted to this, employees at the Brewers' Warehousing Company deal with approximately 80 varieties of domestic beer... For the last five years all LCBO stores have handled some sizes and types of domestic beer. All stores handle imported beer" (page 5 and 6 Union brief)

These two enterprises are good candidates for comparison. Both sell alcohol to the public and make a lot of profit doing so. Both have outlets across the Province. However, they differ in one important

respect. Employees of the BWC enjoy full collective bargaining rights including the right, as the doctors would say, "to withdraw their services"; whereas employees in the LCBO have limited bargaining rights and are denied the right "to withdraw their services" in order to pursue their legitimate collective bargaining goals. The LCBO employees cannot be faulted for concluding that not having the right "to withdraw their services" costs each of them at least \$4,500 per year given that their counterparts at the BWC earn in excess of \$4,500 more than they do.

Because LCBO employees cannot "withdraw their services" in order to press their legitimate pay demands, this arbitration is the only legal avenue for LCBO employees to gain equal pay for the same work as employees at the BWC. While I am pleased that this Board dealt with one contentious issue, namely seniority and the rate of pay for part time/temporary workers, this Board should have come to grips with this longstanding issue of comparability. For this reason, I dissent from the Chairman's award re pay increases of full time employees.

Sean O'Flynn, Union Nominee

/ls

BFCSD: 326

LIQUOR CONTROL BOARD AND
ONTARIO LIQUOR BOARD EMPLOYEES UNION - T/43/84

A D D E N D U M

Whilst I concur generally with this award, I must express concern to the magnitude of the award as it relates to part time and temporary employees.

In the case of the temporary warehouse employees the award represents an increase during the agreement of 17.9% (compounded). All other part time and temporary employees the award represents an increase during the agreement of 10.3% (compounded).

If there is justification for gap closing, in my opinion this is too much in the term of a one year Collective Agreement.

My other concern relates to the reaction of the full time employees in respect to the magnitude of the increases for part time and temporary employees.

A handwritten signature in dark ink, appearing to read "Peter D. Camp", with a long horizontal stroke extending to the right.

PETER D. CAMP

IN THE MATTER OF AN ARBITRATION
UNDER THE
CROWN EMPLOYEES COLLECTIVE BARGAINING ACT

T 43/84
T/0043/84-2

B E T W E E N :

THE LIQUOR CONTROL BOARD OF ONTARIO
AND THE LIQUOR LICENCE BOARD OF ONTARIO
(hereinafter called the Employer)

- AND -

THE ONTARIO LIQUOR BOARD EMPLOYEES' UNION
(hereinafter called the Union)

SUPPLEMENTARY ARBITRATION AWARD

THE BOARD OF ARBITRATION:

Professor A.M. Kruger	- Chairman
Mr. P. Camp	- Member
Mr. S. O'Flynn	- Member

APPEARANCES:

For the Employer:	Mr. R.J. Drmaj and others
For the Union:	Mr. M. Levinson and others

Hearings were held in this matter on March 5 and 6, 1985. At that time, the employer challenged this Board's jurisdiction to deal with certain issues raised by the Union. Because these matters were before the Ontario Public service Labour Relations Tribunal, the Board agreed to postpone consideration of them until that Tribunal issued its decisions.

In our earlier Award, we asked the parties to meet in an effort to resolve the matter of seniority for part-time employees. We remained seized of that issue in the event that they failed to agree.

On May 14, 1985, the Tribunal ruled that this Board had jurisdiction to hear the disputed issues.

We have been informed that the parties have not been able to resolve the matter we referred back to them.

This Supplementary Award will deal with these outstanding issues.

While we have proposed contract language, we would encourage the parties to use their own language consistent with the Award we make below.

Part-Time Employees - Seniority and Related Matters

We order the parties to include the following provisions in an Appendix to the Agreement:-

The parties to this contract recognize the need to provide reasonable employment conditions for part-time employees. The matter is complex and will require further negotiations between us.

Until such negotiations result in new provisions governing the terms and conditions of these employees, we are prepared to implement the following interim arrangements:-

The Employer agrees to recognize the Union as the exclusive bargaining agent for part-time store cashiers and other part-time employees.

Part-time store cashiers are primarily engaged in taking cash from customers and work no more than thirty (30) hours per week on a year-round continuing basis. Such employees may work in excess of thirty hours per week for a maximum of twelve weeks per calendar year.

Permanent part-time employees shall occupy established permanent positions (other than part-time store cashiers) requiring the employee to work for a minimum of fifteen (15) hours per week and a maximum of thirty (30) hours per week on a year-round, continuing basis. Such employees may work in excess of thirty (30) hours per week for a maximum of twelve weeks during the calendar year without losing their status as part-time employees and thereby become full-time employees.

All employees other than those who are full-time, or permanent part-time as defined above in this clause, shall be considered casual employees.

There shall be separate seniority lists on a store, warehouse or head office basis, as applicable, for each of the following groups of part-time employees:-

- Part-time Store Cashiers
- Permanent part-time employees
- Casual employees who work more than 400 hours per calendar year.

Seniority shall be calculated from the date of hire. It shall be calculated on the basis of hours worked but no seniority shall accumulate in

any calendar year in which a part-time employee works less than 400 hours.

Seniority lists shall be posted at each place of work and shall be kept up to date.

Employees who are not full-time and who have worked fifteen (15) hours or more per week for at least sixty-five (65) weeks in the period from January 1, 1984 to June 30, 1985 shall be considered to be permanent part-time employees and therefore, immediately eligible for seniority and all benefits now linked to seniority.

Preference in the matter of available work for permanent part-time employees, including call-in, lay-off and recall shall be by seniority provided that the senior employee is available and capable of performing the requirements of the job. Notwithstanding this, part-time store cashiers shall have preference over all other part-time employees for available work as cashiers.

Article 30.4 in the present agreement shall be amended as follows:-

"The Boards agree to give consideration to the qualifications and ability of part-time employees to perform the duties of a vacant full-time position and of casual employees to perform the duties of a vacant permanent part-time position, before going outside the bargaining unit to fill such positions. Where in the opinion of the Boards, two (2) or more such employees are relatively equal in qualifications and abilities, then seniority shall be the deciding factors in allocating such positions."

Article 16.5(d)

The Board has considered the Union's request. Without more evidence than we received at the hearing, we are reluctant to make any changes in this provision at this time.

The parties also informed us of their inability to agree on the wording of clauses to implement certain aspects of our earlier Award. We have received submissions from them and rule as follows:-

Article 1.5 and 1.6 and any other provisions affected by this change - Time Off For Union Stewards and Zone Representatives

We see no difference between the language submitted to us by the parties save for whether to refer to "Zone Representatives and Stewards" or "zone representatives and stewards."

We award the Employers version of this clause as presented in Mr. Drmaj's letter of June 10, 1985 except that (b) line 9 shall read "loss of pay or credit or regular days."

Article 1.7 - Time Off For the Negotiating Committee

We award the language in the Union's submission to us dated June 22, 1985.

Article 16.11

We award the Employer's version of the clause.

New Article - Personnel Files

We award the Union's version of the provision.

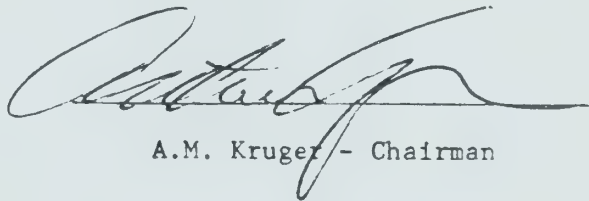
Monetary Increase For Part-Time Employees

The May 1, 1985 increase for part-time and temporary employees shall be calculated after the July 1, 1984 adjustment has been made, as the Union has requested. Then the 50¢ per hour increase shall be added to the May 1, 1985 salaries, so that the 5% May 1, 1985 increase does not apply to this part of our Award.

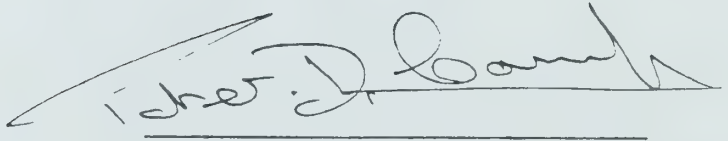
The Board shall remain seized of all these matters for a period of thirty (30) days from the date of this Award in the event the parties experience further difficulties in implementing our Award.

A.K. C.H.
6th August

DATED at Toronto, Ontario this ~~21st~~ day of ~~July~~, 1985.


A.M. Kruger - Chairman

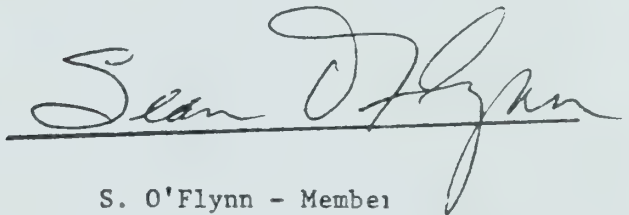
I Concur/I Dissent



P. Camp - Member

Addendum to follow

I Concur/~~I Dissent~~



S. O'Flynn - Member

T/43/84

IN THE MATTER OF AN ARBITRATION

UNDER THE
CROWN EMPLOYEES COLLECTIVE BARGAINING ACT

B E T W E E N
THE LIQUOR CONTROL BOARD OF ONTARIO
AND THE LIQUOR LICENCE BOARD OF ONTARIO
(The Employer)

- A N D -

THE ONTARIO LIQUOR BOARD EMPLOYEES' UNION
(The Union)

SECOND SUPPLEMENTARY AWARD

BOARD OF ARBITRATION:

Professor A. M. Kruger	-	Chairman
Mr. P. Camp	-	Member
Mr. S. O'Flynn	-	Member

This Board has recently received a request from the Union to assist in the interpretation of our Supplementary Award, dated August 6, 1985. The question posed by the Union are properly before us, having been raised within the thirty days in which we agreed to remain seized of the issues.

There are three issues before us.

1. On pages 2, 3 and 4, of our Supplementary Award, we ordered the parties to include certain matters relating to part-time staff in an Appendix to their agreement. In so doing we intended that this portion of the agreement would be arbitrable.

So that there is no misunderstanding of our interest, we order the parties to include in their Memorandum of Settlement the words in item 7 of the "Union Version" of that Memorandum namely:

"It is agreed that all provisions contained in attachments to this Memorandum of Settlement (pages 1-31) shall be considered to be part of the Collective Agreement".

2. On page 2 of our Supplementary Award, we encouraged the parties to develop their own language rather than necessarily following the precise language we proposed.

The Union has asked us to force the parties to meet outside the framework of discussions on a new agreement.

We are not prepared to grant this request since it would not be consistent with our intent. The Board only acted to "encourage the parties to use their own language". We did not intend to compel

them to do so. We were aware of the possibility that they would not agree on language and we provided contract language to cover this eventuality. The parties must incorporate the language provided by the Board in this Agreement.

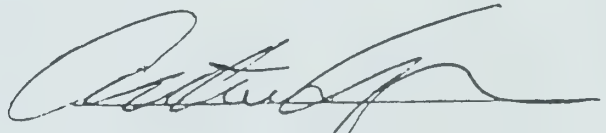
3. The third issue raised by the Union is whether our Supplementary Award removed the employer's management right to create positions. The answer is yes and no.

The Employer can still decide on how many of each kind of employee would be employed at each work site. What our Award says is that once the Employer uses an employee for a certain number of weeks per year, that employee will fall into the appropriate classification and he or she will appear on the seniority list for that category of employee. Once on the list, his or her seniority "shall be calculated from the date of hire" on the basis of hours worked in any calendar year.

There is ambiguity in our Supplementary Award concerning how existing employees who are not full-time shall be classified. We order that any of these employees who worked the requisite hours in the calendar year 1984 shall be declared to be part-time cashiers or permanent part-time employees or casual employees with their seniority back dated to the date of hire as indicated in our Supplementary Award. A similar calculation shall be made in 1985 and subsequent years to decide on the appropriate category for each employee.

Movement among categories shall be governed by the revised version of Article 30.4 in our Award and by other appropriate clauses in the Agreement."

DATED at Toronto, Ontario this 17 day of October, 1985.

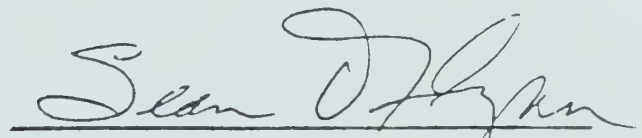


A. M. Kruger - Chairman

I Concur/I Dissent

P. Camp - Member

I Concur/~~I Dissent~~



S. O'Flynn - Member

T/43/84

IN THE MATTER OF AN ARBITRATION

THE EMPLOYER

THE LIQUOR CONTROL BOARD OF ONTARIO
(hereinafter called The Employer)

- A N D -

THE ONTARIO LIQUOR BOARD EMPLOYEES' UNION
(hereinafter called The Union)

ADDITIONAL SUPPLEMENTARY AWARD - JANUARY 1986

THE BOARD OF ARBITRATION:

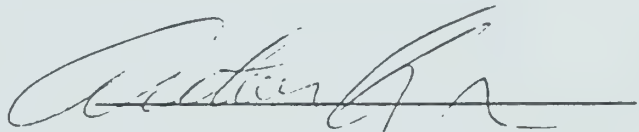
Professor A. M. Kruger	- Chairman
Mr. P. Camp	- Member
Mr. S. O'Flynn	- Member

This Award is in response to submissions to this Board arising from our Supplementary Arbitration Award dated August 6, 1985. We have carefully considered these submissions.

The Board concludes that the parties should immediately sign and implement the collective agreement submitted by the Employer to the Union on August 30, 1985, and subsequently submitted to this Board on October 23, 1985 and we so order.

The Board considers the Appendix relating to Part-Time Employees to be an integral part of the collective agreement and, therefore, subject to the provisions of Article 27.

DATED at Toronto, Ontario this 17th day of January, 1986.

A handwritten signature in dark ink, appearing to read 'A. Kruger', written over a horizontal line.

A. Kruger - Chairman

"I concur"

P. Camp - Member

"I concur"

S. O'Flynn - Member

T/42/24

IN THE MATTER OF THE CROWN EMPLOYEES' COLLECTIVE
BARGAINING ACT

AND IN THE MATTER OF AN ARBITRATION

BETWEEN AMALGAMATED TRANSIT UNION
 •LOCAL 1587
 (The Union)

AND TORONTO AREA TRANSIT
 OPERATING AUTHORITY
 (The Employer)

BOARD OF ARBITRATION; H.D. BROWN, CHAIRMAN
 A. CORMIER, EMPLOYER NOMINEE
 W.A. VINCER, UNION NOMINEE

APPEARANCES FOR
THE UNION J. SACK, Q.C., COUNSEL
 L. RICHMOND, COUNSEL
 E. BLAKE, PRESIDENT

APPEARANCES FOR
THE EMPLOYER E.T. McDERMOTT, COUNSEL
 J. DESJARDIN
 A. ROBINSON
 H. FLOOD
 P. LO

HEARINGS IN THIS MATTER WERE HELD AT TORONTO ON
MAY 30, MAY 31, AND JUNE 6, 1985.

AWARD

This dispute arises as a result of a failure of the parties to conclude an agreement between them concerning a renewal of their first collective agreement, which was executed on November 11, 1981 and which expired on March 31, 1983. By the provisions of the Inflation Restraint Act, that collective agreement was extended through to March 31, 1984, during which period there were no changes to the collective agreement, other than an increase of 5% to the wages. Notice to bargain was given by the Union on January 11, 1984, with regard to a renewal of the agreement to become effective on April 1, 1984, subsequent to which the parties met throughout the year on some twenty bargaining meetings which resulted in an agreement on a significant number of items which had been in dispute between the parties.

Pursuant to Section 13 (2) of the Act, the parties filed with the Board a copy of those matters which had been agreed directly between them. The Board therefore heard the submissions of the parties concerning the remaining issues in dispute between them and which are the subject of this award. Since the hearings, the Board has met to consider all of the submissions of the parties on the matters in dispute between them and as well, has received and considered since that time, various written representations by both

sides concerning some of the issues in dispute in this matter.

Following the hearings, the Employer referred certain issues which had been part of the dispute to the Ontario Public Service Labour Relations Tribunal for its determination of whether such matters fell outside of the scope of collective bargaining, therefore outside of this Board's jurisdiction to determine. At the hearings, the Board agreed to defer its consideration of those specific matters until the Tribunal had made its decision as to whether this Board had jurisdiction, although the Board received submissions on the merits of each of such headings of dispute. Those matters which were referred to the Tribunal are set out in detail on the letter to that Tribunal from counsel for the Employer dated June 11, 1985, as follows; part-time employees, Articles 22.02, 22.03, 22.04 and 37; contracting out, Article 35.02; employee appraisals, Article 34.10; apprenticeship committee, Article 34.11; job description committee, Article 34.04; and the proposal to add two new employee classifications of repair mechanic - air-conditioning and repair mechanic - electrical.

The basic thrust of the Union's case is for parity of wages for all classifications with the

employees of the Toronto Transit commission (T.T.C). To achieve that level would in its submission, require a 13% increase for a one year agreement, fully retroactive to April 1, 1984. The Employer's basic position is that the Board should award a two year collective agreement with total compensation of 5% in the first year and 3% in the second year. Pursuant to Section 17 (2) of the Act, where the parties fail to agree on the term of a collective agreement, the Board shall determine its term of operation. We note that the parties did not enter into bargaining with regard to wages for a second year agreement because the Union's position throughout was parity in the first year and that the Union's submission does not deal with wage levels for the second year. It is therefore this Board's opinion that its resolution of the term of operation of the collective agreement is pivotal to its determination of the wage increases and the extensive issues remaining in dispute between the parties. Both the term and the wage increases have a direct correlation for the purposes of which the Board must address the parity argument of the Union.

GO Transit is an inter-regional transportation system funded by the Provincial government and as such is a Crown Corporation coming under the provisions of the Act. The system operates with commuter trains and buses from the corridor Hamilton to Oshawa and north and

west from Guelph, Newmarket and Barrie. The Union represents approximately 400 employees of whom approximately 140 are part-time, working less than 40 hours per week, anywhere from 16 to 35 hours. These classifications fall within the plant section which maintains the physical plant of its operations, an equipment section for repairs and maintenance of vehicles, a passenger service section which includes bus drivers and various classifications of ticket agents and station service personnel. Approximately 70 employees are employed in the plant section of whom about 50 are located in metropolitan Toronto. The majority of 85 employees who work in the equipment section are at the Steeprock Garage in Toronto. There are about 70 full-time and 18 part-time bus drivers and about 100 full-time and 100 part-time passenger service employees of whom 70 work at Union Station in Toronto, with the rest employed at various terminals and stations in the Toronto area. The negotiations between the parties were complicated by the assumption of the Employer of the operation of its bus routes which had previously been contracted out to the T.T.C. and Gray Coach Lines. That change impacted on the employees of those organizations and subsequently resulted in the passage of Bill 125 on August 29, 1984. That legislation picked up the terms of a memorandum of agreement between the T.T.C., Gray Coach Lines and Locals 113 and 1584 of the Union,

whereby the drivers which had been employed in those organizations and had been assigned to operating the buses for GO Transit had their wages red-circled at the rate in effect at the time of hire if they were lower than the wage rates paid at GO Transit. Subject to that, the working conditions would be in accordance with there then collective agreement. In addition, Section 10 of the Appendix R to the memorandum agreement between the parties was included by Section 13 (2) of the Act which provided that the provisions in the memorandum as to wages and terms and conditions of employment, "are without prejudice to the current negotiations for renewal of the existing collective agreement between GO Transit and Local 1587, A.T.U. and further will not set a precedent for the provisions of the existing GO Transit - Local 1587, A.T.U. collective agreement", which was put to the Board by counsel for the Employer as a limitation of its consideration on this issue.

The result of the enactment of that Bill was to preclude the T.T.C. employees from engaging in another lawful strike in 1984, which had been called by Local 113 just prior to the visit of the Pope to Toronto. The employees were given an immediate increase of 5% subject to arbitration and that amount was subsequently confirmed by Professor Weiler who was the appointed arbitrator in that dispute. In addition to

the red-circling of the rates, the employees who transferred to GO Transit retained their seniority which would be dovetailed with those of the existing GO Transit bus drivers. Those employees also took with them their accumulated service for vacation credits and were not required to undergo any probationary period, which was at that time for one year. The Union's position was that the recognition made by this arrangement established the interchangeability of the drivers in the T.T.C. and Gray Coach Line system with those of GO Transit. The rate for the T.T.C. bus drivers as a result of the arbitration award at that time was \$13.28, while the rate for the bus drivers at GO Transit for the 1983 - 1984 contract year was \$11.75. It was submitted by the Union that the Act created two classes of bus drivers at GO Transit with the differential of \$1.53, based not on length of service or matters of skill and ability, but on the driver's previous employer. It is the Union's position that the bus drivers' rates should be the same level in the system and should not be any less than the rates paid by the T.T.C. to its drivers. Reference was also made in the Union's submission with regard to its quest for parity with the T.T.C. to the transfer of skilled equipment maintenance employees of the T.T.C. to GO Transit in August 1979, as a result of GO Transit taking over the maintenance of its buses, all of who

transferred to related classifications and in its submission met the requirement of the Employer. At the time of the transfer of this group there was a differential of 5 cents between the rates of T.T.C. and the Employer which increased to the end of this collective agreement to \$1.05, which the Union seeks to correct. It is its submission that the same skills and the same work ought to attract the same wages.

The Union further referred to the comparison of the job descriptions which descriptions are unilaterally developed by the Employer, in order to indicate the equivalence in the similar classifications and the disparity of the job rates in the two groups of which we have considered in detail. With regard to the operator - motorman (T.T.C.) and bus driver (Go), both positions require a valid ontario driver's license, class B or C, good physical condition and competence to drive. The differential between the classifications at the end of the last agreement was 90 cents and the Union is seeking parity. It was submitted that any classification could be used as a benchmark to measure the system in place, in order to describe the similarity of the wage structure and to obtain the necessary comparisons. The Union referred to the average urban transit wage prepared by Statistics Canada which as of January 1984 averaged to \$13.25 per hour and in January

1985 became \$13.74 per hour, in support of its opinion that the Employer's present rates are below the average hourly rate in this industry.

The Employer referred in its submission to the criteria for determination of the dispute which the Board should use and referred in support of its position to the provincial legislation which affected the parties, the general economic state of the Province, rate of inflation, comparisons with the public and private sector, wage settlements, comparison of the wage rates of its employees with comparable public and private sector employment and the increases received by management of G. Transit, each of which headings were developed by counsel in great detail, which we have considered but for the purposes of economy will not here reproduce. It is the position of the Employer that any increase in wages must fall within and not exceed 5% set by the restraint guidelines in terms of total compensation. It was also noted that on March 1, 1985 Mr. Grossman, then Ontario Treasurer, announced that transfer payments for public service salaries for 1985 would increase by no more than 3%, which is the submission of the Employer for increase in the second year. The operations of GO Transit indicate a loss position, so that in its view, the actual cost of the Union's proposal of 16%, taking into account the wage

demand as well as the increase to the other monetary and non-monetary areas, is in its submission not justified in this agreement.

It was submitted that the arbitrators who dealt with public service disputes in 1984, found that wage increases must not exceed 5% unless the Union could provide convincing evidence that such a limit was unreasonable. In addition settlements in the private sector in 1984 indicated an average annual increase of 3.3% in the Province and in Canada at 2.8%. In the public sector in Ontario the average increase was 5% and settlements in Canada was 4%. For a two year collective agreement the increases without COLA are slightly over 3%. It was submitted that the Employer's proposal would provide an average increase of 4.075% over the life of the collective agreement if determined at two years. In support of that proposition reference was made to the Weiler award in the T.T.C. in which the arbitrator said, "if anything, the Bill 111 guidelines may have helped keep Ontario public sector wage increases somewhat above the level, they might have found." It is the Employer's position that it is not reasonable for its employees in a period of restraint to increase their position, relative to other similar wage categories. In its review and comparison with other transit authorities, it is submitted the Employer is paying equivalent or

superior wages in the industry. The Employer proposed the same increase to wages as paid to its management and non-bargaining unit employees for both 1984 and 1985.

The Employer strongly resisted the Union's proposal for parity with the T.T.C. in that in a period of restraint, there is no room for such improvement and that the proposal in such circumstances is not reasonable. In addition, it was submitted that when the employees who formerly worked with the T.T.C. chose to transfer to GO Transit, they accepted the different working conditions, wage rates and benefits, some of which were better for them, but in any event as it was their choice, they cannot now argue parity. It was further submitted that the T.T.C. operates entirely with Metropolitan Toronto while the GO Train operation is an inter-urban regional system, the bulk of which is outside metropolitan areas and is essentially a commuter type operation. In that regard its revenue is based on use is lower than the T.T.C. which carried as many passengers in three weeks as GO Transit does in a year, according to its statistics. Consequently GO Transit relies on provincial subsidies. Therefore in its submission the appropriate comparison is not with the T.T.C. but with smaller Ontario transit authorities, by which comparison the rates paid by GO Transit compare

favourably and are well above the average. There are similar job classifications throughout the transit authorities and there are some which differ from the T.T.C. It was further submitted that absent the history of wage parity between GO Transit and T.T.C., the Union's submission is totally unreasonable. As a result of a settlement with regard to the bus driver wage rate, the parties agreed that as of March 31st, 1984 the drivers' rate would be \$11.75. Those drivers which were obtained from Travelways who were then being paid at \$10.00 per hour came to GO Transit at the higher rate. There is further in its submission no basis to increase all of the classifications at 13% which is the differential proposed by the Union for the bus drivers' rate.

The Board has carefully considered these submissions and in consideration of its determination of the parity and wage issue has as well considered its statutory directions, as well as the general economic criteria normally applied in disputes of this nature. By Section 12 (2) of the Act, the Board has broad powers to consider any relevant factors, including specifically the conditions of employment in similar occupations outside the public service. The Board must consider the effect of the Public Sector Price and Compensation Review Act passed in November 1983 as Bill 111, by

Section 10 (1) ... "the arbitrator shall consider the employer's ability to pay in the light of provincial fiscal policy". That part of the Act and the application of the Act in general has been dealt with by a number of arbitrators who have determined interest disputes in 1984, both in the private and public sector, including the present chairman, whose opinion in that regard has been set out particular in Re: O.P.S.E.U. and the Crown in the Right of Ontario (Institutional Care Category) award, October 24, 1984. In that award the Board reviewed the previous awards of Mr. Kates, Professor Barton and Miss Knopf and concluded that arbitrators are not limited in their authority to the imposition of the guideline range as set in the province. The chairman noted,

"We also find that we are not so bound and do have an independent function provided under Crown Employees' Collective Bargaining Act to determine all matters in dispute between the parties within the scope of the collective bargaining referred to in Section 12 (1) of that Act. In so doing the Board is required by Bill 111 to consider the employer's ability to pay in the light of existing provincial fiscal policy as one of the factors relevant to the decision it must reach...which takes the meaning beyond just a failure of the employer to want to pay any increases which may be imposed, into the practical area of consideration of the

economic factors which confront the employer and therefore its employees which can reasonably be taken into account by an arbitrator."

The Board further went on to state;

"We have found that the Board is not prohibited from exceeding the guidelines, but in view of that restraint policy and having regard to the wage settlement data in the province, there must be established a compelling need for special consideration of this group of employees to justify and award in excess of the guidelines."

It is noted that in the Metropolitan Toronto Police Association case (Goldenberg), the arbitrator said with regard to the provincial fiscal policy for 1984, "if the Union wishes an increase in compensation higher than the standard which has been set under Bill 111, it should specifically make a strong case for such an increase." As well, Arbitrator Weiler in the Toronto Transit Commission and A.T.U. case held in January 1985 that the 5% guideline must be, "a major factor in any arbitrators' resolution of public sector disputes this year."

Other criteria include the cost of living

which in 1984 was increased by somewhat less than 4%. This general economic result is reflected in the wage increase settlements, both in the public and private sector by the data referred to above from the Department of Labour for settlements in this province and across Canada, which averages have been less than the cost of living index increase in the private sector and not greater than 5% in the public sector. Clearly this economic indicator and both the federal and provincial restraint policies prior to and including 1984 have acted to restrict wage and compensation increases to or below the fiscal guidelines. Arbitrator Weiler referred to the settlements within Metropolitan Toronto at page 8 of his award and indicated that the A.T.U. transit settlement which slightly exceed 5% slightly, fared well by comparison with the other bargaining units in metro in 1984, thirty-eight of which had settlements of exactly 5%, nine below 5% and four above that level. The Board is required by legislation to give consideration to the cost of its award in which concept it must be cognizant of the total compensation involved as being the actual cost to the employer of any contract adjustments to wages and benefits applicable at the expiry of the collective agreement.

The Employer argued that there is a concept of, "demonstrated need" as a fundamental consideration

of an arbitrator for making such contract adjustments, in that the Union must establish the need for the change. While this is one factor which may be present in such disputes, it is not in the chairman's view such a fundamental proposition as to give it the weight of a condition precedent for making contract changes such as might be taken from the comments in other awards referred to in the Employer's brief. If the proposition holds that an arbitrator in an interest dispute is attempting to provide an award which will reasonably exhibit what the parties may have otherwise negotiated directly and having regard to outside direct settlements as opposed to arbitrated settlements, it cannot be found that in such circumstances those contracts were developed through demonstrated need. Direct negotiations are not generally so conditional. If of course there is need for change and a proposal which substantially is found to meet the desired amendment, that certainly can be given weight. It is not however, sufficient for an arbitrator to hold that as the party who requests a change did not in its opinion establish it, that there should be no change made by the Board, as the arbitrator does have the responsibility of looking at all the relevant factors in such a dispute and has the authority to provide such contract terms as may be deemed appropriate to deal with the specific issue in dispute and to resolve it. That is clearly the

direction under the Act set out in Section 12 (1) where the Board is required to, "examine into and decide on matters that are in dispute within the scope of collective bargaining under this Act." The limitation of need which has been ascribed by others, is not a limitation under this Act, nor is the concept anything more than a factor which a Board of Arbitration may consider in the totality of the dispute.

Having dealt generally with the background of this dispute and the various factors which this Board has considered we will deal specifically with the issue concerning wage increases in term of the collective agreement. In regard to both of these issues, the Board must take into account the Union's basis proposal of parity with the T.T.C. wage rates. Having regard firstly to the legislative restraint in existence in 1984, which affects the first year of this collective agreement, the Union's position for a 13% wage increase cannot be sustained on the basis of any of the criteria, save a direct comparison of wage rates with the T.T.C. classifications. That type of comparison with conditions of employees in similar occupations as referred to in the Act might ordinarily be a most persuasive factor and one which was developed carefully in the brief of the Union in this case. For example a bus driver in the city of Toronto for the T.T.C. does

identical work with a bus driver in the city of Toronto or in the regional area as a bus driver for the GO Transit system. There are also bus drivers employed by other transit authorities in the province. The Employer submitted that this factor should be viewed in comparison with the smaller transit authorities than with the giant T.T.C. All of which begs the question of where should the parties and an arbitrators look for equivalent and relevant comparisons.

The GO system was established to service Metropolitan Toronto and continues to do so as a commuter service for people to go in and come out of Metropolitan Toronto in the main. A minor use of the system would relate to use between other points on the line, such as Mississauga to Hamilton. The system was put in place clearly not to service that type of inter-municipal travel as a prime objective, but rather to service the people who require and want public transport facilities to and from Metropolitan Toronto, involving those municipalities which are now serviced throughout the system. For the most part, the employees represented by the Union would be employed in Metropolitan Toronto, which then becomes a logical economic comparative centre for wage comparisons. Employees of GO Transit are part of the Ontario Public Service and are controlled by the terms of the Act,

while the other transit authorities come under the provisions of the Labour Relations Act and have therefore the right to strike. As a result of strike action in 1984, the Province passed Bill 125 to prevent the strike at the T.T.C. which had been called by Local 113. By that Bill, the dispute was referred to arbitration, resulting in the award of Professor Weiler which has been referred to above. While it is provided by that legislation that it is, "without prejudice to the current negotiations for renewal of the existing collective agreement..." The circumstances of how that arose and the effect on the operations of GO Transit by the transfer of bus drivers, can be considered in a comparative manner, although this Board may not review the effect of the red-circled rates or working conditions of such employees. Quite apart from that, there are common classifications and work requirements of employees in both systems and while the differences in operating transit facilities to move people within Metropolitan Toronto may be somewhat different than an inter-urban requirement, the relative skills of the employees are equivalent. The Head Office of the Employer is in Toronto where the management staff and other non-bargaining unit employees work. In all, this is a Toronto based operation, designed to serve that metropolis so that it can logically be said that the interests of the employees of GO Transit is with that

community and with which wage and benefit comparisons of employees in similar occupations can reasonably be made. In addition, as we have noted, these employees are part of the public service to which a comparison must also be made.

By and large however, the thrust of the Union's position is in our opinion, substantially supported by reference to equivalent classifications with the other main transit authority in the Metropolitan Toronto area which is the T.T.C. and has provided this Board with a compelling argument that this is the appropriate comparison for wages to be paid by GO Transit to its employees. We do not accept the submission of the Employer to the contrary that this type of transit facility should be compared to smaller municipal facilities and in that regard we have noted that the budget for this Employer is second only in size to the T.T.C. In that regard, having regard to the Employer's data on the maximum rates in the other systems in the province, we note that the Hamilton bus driver rate exceeds the T.T.C. rate for 1984 and that assuming a 5% wage increase as proposed by the Employer, the GO Transit bus driver rate is the equivalent of Ottawa, Sudbury and Mississauga. However on average the rates would not exceed the average urban transit wage. Unlike other disputes, there is not a historical basis for

comparison, either within Toronto or to other municipal transit systems, the first collective between these parties being executed in 1981.

While the Board in other economic circumstances would be persuaded by the Union's submission on parity with T.T.C., so as to make some significant adjustments in that respect to the wage rates involved in this collective agreement since the employees are part of the public service and having regard to all of the other economic comparative data which the Board must take into account, which we have referred to above, we find that a parity position or even a substantial step in that regard cannot be achieved in a collective agreement for one year commencing March 1984. All of the wage category disputes in the public service are for one year terms. These parties have not directly negotiated for second year adjustments. Therefore while the Employer proposed an adjustment for the second year at the hearing, the parties have not objectively dealt with that aspect of their dispute. The Employer referred to the adjustments requested by the Union and quite properly pointed out that whatever changes this Board makes, it would be in a one year agreement a retroactive settlement by which the parties would not have the opportunity to live under a collective agreement and with the numbers of changes

requested, a two year collective agreement was the basis of its submission.

While the Board has given careful consideration to both views, having regard to the practice in the public service and the manner of the parties' negotiations prior to the hearing and that they have resolved a number of substantial items directly between them which have been applied, the only period of time this Board can objectively deal with on the matters before it is for a fixed one year term. As the parties did not directly deal with the issue of wage increase in a second year, it being the Union's position that parity must be achieved in 1984 and their whole thrust in negotiations and at this hearing was to obtain that aim. The Board while having the authority under the Act to set a longer term, does not have the objective view of the parties for its determination of the appropriate adjustment in a second year of the agreement. At most the Board would remit that issue to the parties for direct negotiations before any determination would be made by it, which may indeed extend these matters to the expiry of a second year of the collective agreement. While we understand the Employer's rationale for a two year term in this collective agreement which in many respects such as the area of benefits adjustment, has much to commend itself but does not in our view face the

reality of the dispute between the parties at this time for this Board's determination. Having regard to the Board's finding, it can be hoped that the parties can determine a longer term of operation for subsequent collective agreements which is a preferred method of operation so that the parties can administer between them a current agreement.

It is therefore the Board's award that the term of the collective agreement shall be as and from April 1, 1984 up to and including March 31, 1985.

The Board has carefully considered all of the economic data and the factors to which it has referred in this award and it is satisfied that there is a compelling case made by the Union on the basis of its comparative submissions, that while the wage adjustment it requested, cannot be supported, a reasonable increase to total compensation exceeding the provincial guideline is substantiated in order to provide more comparable working conditions with employees in the similar transportation system, in essentially the same community doing the same job. As well the result of the award will compare favourably with the other three larger municipalities referred to above. While absolute parity with employees in the T.T.C. is not necessarily the end result for each classification, there is a strong case

to be made for equitable parity in consideration of the appropriate comparative statistics which should be achieved in the course of time. What comparative parity means in 1984 in the public service is an average increase of not more than 5%. That increase was confirmed by Professor Weiler in the T.T.C. award. The Union argues in essence for a catch up in this year on the basis of its parity position, but for the reasons set out above, the maximum which can be justified in this term of the agreement is a 5% increase for all classifications. This dispute does not concern a historical or productivity disparity or any other compelling reason to exceed the average public service wage increase in 1984. As noted, for that year the average increase in the public service exceeded both the cost of living index and private sector settlements.

It is therefore the Board's award that there shall be a wage increase across the board of 5% effective as and from April 1, 1984 to all classifications and ranges within the classifications. The Board declines to award any specific classification wage adjustments.

The Board further awards that for the purpose of this collective agreement there shall be no change to the wage range in Schedule A of the classifications.

ARTICLE 38 - RATES OF PAY AND GROUP BENEFITS

The Board awards that both Articles 38.01 and 38.02 as presently contained in the collective agreement shall be continued without amendment.

The Union sought to increase the basic life insurance coverage from 75% of annual salary or \$10,000.00 whichever is greater to 75% of three times annual salary or \$10,000.00 whichever is greater. The Employer submits that there should be no change to the present benefit package as a matter of cost and on the basis that it need not be upgraded for the term of this collective agreement.

We agree with the Employer's submission in that respect concerning the changes of benefits, particularly in a one year term of collective agreement which has expired as such benefits cannot be acquired retroactively. In addition, the Board has taken into account in its assessment of the cost of this dispute, not only the wage increase which it has awarded and where in this particular period the emphasis should be placed, but as well must consider the compensation cost

as a whole and therefore the importance of increasing the fringe benefits loses some significance for this contract period.

The Board awards that the dental plan shall be amended to provide that payments to the plan shall be in accordance with the current Ontario Dental Association schedule of fees, effective January 1, 1984.

ARTICLE 11 - HEALTH AND SAFETY

The Union proposes that there be changes to Articles 11.03 and 11.04 to provide a subsidy for a boot allowance from the present practice to \$150.00 per year; that the current policy relating to prescription safety glass, uniforms, work clothing and tool allowance continue, but that employees shall be given time off work without loss of pay to attend an optician's office, that the Employer reimburse servicemen and maintenance employees in the equipment section for the cost of tools purchased up to \$100.00 per year and servicemen and maintenance employees in the maintenance section for tools purchased up to \$50.00 per year; that the Employer reimburse all employees who are required to have tradesmen's papers for the cost of such papers.

The Employer presently reimburses employees

for the cost of safety boots on a scale type of boot without a cap on the number of pairs of boots for which an employee can receive reimbursement. The Union's request from the data before us is more than twice of what the average is as an allowance in other transit systems. We are satisfied that the present practice is reasonable and should be continued without change for the term of this collective agreement and we so award.

The Board rejects the Union's proposal that employees be given time off to attend an optician's office.

The Employer presently provides an annual tool allowance of \$85.00 per tradesman in the bus maintenance section, other employees in this section are provided with tools. An annual tool allowance of \$25.00 is paid to the tradesmen in the plant maintenance section. We have assessed the positions of the parties in this matter and find that the Employer's proposal to increase this benefit is appropriate, therefore the Board awards as follow;

"Effective April 1, 1984 the tool allowance shall be increased as follows; tradesmen in the bus maintenance section - \$100.00 per year; tradesmen in the plant maintenance section - \$40.00 per year. The Employer

shall provide the necessary tools for building serviceman, route serviceman, maintenance utility man who are employees in the plant maintenance section."

The Board awards that Article 11.04 shall be amended to provide;

"The Employer shall reimburse all employees who are required to have tradesmen's papers for the cost of such papers each year."

ARTICLE 32 - HOLIDAYS

It is the Union's submission that the length for qualification for certain vacations has not increased since 1981 and therefore requests reduction from 11 years of service for 4 weeks vacation to 10 years and the reduction of 20 years of service required for a 5 week vacation to 19 years, which in its submission would closely parallel the T.T.C. entitlement where the employees who have 18 years of service are entitled to 5 weeks of vacation and 6 weeks for those with 25 years or more.

In addition, the Union proposed to add an additional floating holiday to the list of statutory

holidays set out in Article 33.1, which includes 11 such days. The floating holiday could be taken at a time convenient to the employee subject to the Employer's approval.

The Employer opposed the changes to the current vacation entitlement schedule and statutory holiday provision which in its opinion favourably compares to other transit authorities in Ontario.

We have assessed the data before us and award that effective for the 1985 vacation year Article 32.1 (b) shall be amended to provide that an employee with more than 10 years of continuous service, but less than 20 years of continuous service as of December 31, shall be entitled to an annual vacation of one and two third days for each completed month of service during the vacation year with pay at his regular straight time hourly rate.

The Board awards that there shall be no other change to Article 32 which shall be continued in its present form.

The Board notes that the following Articles are not in dispute between the parties; Articles 32.02, 32.03, 32.04, 32.05, 32.06, and 32.07 and awards that

these Articles shall be continued in the collective agreement without amendment.

The Board rejects the Union's proposal to amend Article 33.01 by adding a floating holiday and awards that the present Article shall be continued without amendment in the collective agreement.

ARTICLE 25.01 - ON-CALL PREMIUM

The parties agreed that this Article is to be amended by adding the following at the end of the Article;

"and he shall be called in for work if work is required during the on-call period."

The issue in dispute between the parties on this term is the amount of compensation for this duty, which is currently 25 cents per hour. The Union seeks to increase the payment to 37 cents per hour and the Employer opposed the increase on the basis of cost, which for the hours paid in 1984 would represent an increase of 32.4% on this item and a substantial cost in the year if made retroactive.

The Board rejects the Union's proposal to

increase the amount paid for on-call duty and awards that Article 25.03 shall be continued without change in the collective agreement, except to the extent agreed by the parties.

ARTICLE 36 - SHIFT PREMIUM

The present rate is 23 cents per hour which has been in effect since 1981 for hours of work between 7:00 p.m. and 5:00 a.m. The Union proposes to increase the shift premium to 32 cents per hour which was the shift premium rate at T.T.C. effective July 1, 1984. The Employer's position is that there should be no change to the amount of shift premium which was a result of negotiations and having regard to the comparisons with other transit systems and the cost of increase, which in its calculation would be 39% over the present cost for the Union's proposal to be applied.

The Board has considered all of the data before us on this issue and awards that Article 36.01 of the collective agreement shall be amended to provide that effective April 1, 1984, the amount of shift premium shall be increased to 25 cents per hour and that effective October 1, 1984, it shall be further increased to 30 cents per hour and paid retroactively for all such hours and to all employees so entitled.

ARTICLE 34.05 - BARGAINING UNIT WORK (NEW)

The Union proposes that foremen and supervisory personnel not perform bargaining unit work except in emergency or for the purposes of instruction. The Employer submitted that if such a clause be inserted into the agreement for the first time, then it should be awarded on the basis of inserting the words, "normally", to remove the conflict where a member of the bargaining unit might occasionally perform a task which may also be performed by a supervisor.

The Board awards that the collective agreement shall be amended to provide the following Article;

"Foremen and supervisory personnel shall not perform work normally performed by members of the bargaining unit, except in the event of an emergency or for the purposes of instruction."

ARTICLE 21 - OVERTIME

The parties have agreed that the first and third paragraph of this Article shall continue without amendment. Their dispute concerns the second paragraph which the Union seeks to amend by providing for overtime

for full-time employees in excess of 40 hours per week or 8 hours per day, or performed on a scheduled day off, as well as for part-time employees in excess of their scheduled working hours or 33 hours per week, or performed on a scheduled day off. Presently overtime means, "an authorized period of work calculated to the nearest quarter hour and performed on a scheduled working day, in addition to the regularly scheduled working period..." The Employer requested a change in the present language to provide that overtime means, "an authorized period of work calculated to the nearest quarter hour and performed beyond 8 hours per day or 40 hours per week, or performed on a scheduled day off, provided the employee has worked 40 hours."

The Union objected to the Employer's request to the amendment that overtime would not be paid to any employee until he had worked 40 hours in a week, unless otherwise absent by holiday or vacation. It is also its position that part-time employees should be paid overtime where they perform work in excess of their scheduled working hours, or in excess of 33 hours per week, which is the Union's requested definition for part-time employees. To award the Employer's language would in its submission, reduce the benefits to which part-time employees would be entitled under the present language where such employees worked in excess of their

scheduled working hours. That issue was at the time of this hearing being dealt with by the Grievance Settlement Board, the award of which (Delisle, March 23, 1985) was brought to the Board's attention in September by the parties. That Board allowed the grievance which meant that a part-time employee was entitled under the language of Article 21 to overtime beyond his scheduled work period. The Board stated at page 6;

"Management advanced the thought that it would ironic to permit a part-time employee to qualify for an overtime rate after working only 28 hours in a week, while a full-time employee needed to work 40 hours to qualify. There is nothing ironic when one observes the other benefits provided by the agreement to full-timers and denied to part-timers. In addition the part-timer has been employed to fulfill a limited number of hours but on a regular basis. The disruption of that regularity qualifies for the overtime rate."

The Employer submitted that this important issue should not be determined on the basis of a right's arbitration where an interpretation of the previous agreement was given and relied on the logic of its argument to the Board concerning its request for change, so that all

employees would have the same equivalence of overtime pay. Its proposal is meant to clarify the existing language and practice that overtime is only paid to both full-time and part-time employees for work performed in excess of 8 hours per day or 40 hours per week, which in its view was the intent of the previous provision and was the matter in which management administered this section.

Having regard to the strong opposing arguments as to the change of this Article and to the recent arbitration award referred to above and to the term of this agreement set by this Board, we find that it would be inappropriate for this Board to amend the current language of the collective agreement. While we recognize the importance of this issue to both parties and that failing resolution by them directly, the issue will require subsequent third party determination, it is our opinion that the parties should, in the context of this dispute give further consideration to their positions for the purposes of a subsequent collective agreement. Issues of this type are best considered in a prospective collective agreement rather than affecting retroactively the parties' interests in this area. The Board therefore recommends that the parties further deal with issue directly in their next round of bargaining.

It is the Board's award that the present Article 21 shall be continued without change for the term of this collective agreement.

SCHEDULE B - BENEFITS FOR PART-TIME EMPLOYEES

Section 10 of this schedule provides that part-time employees are eligible to subscribe for the benefits of basic life insurance, O.H.I.P. and supplementary health and hospital insurance, in total in which case the Employer will pay 50% of the monthly premium. The part-time employees are limited to participating in these three benefit plans and are not eligible for any of the other Schedule B benefits, such as the short and long term income protection and dental plan. The Union's position is that part-time employees should continue to be eligible for these three benefits with the Employer paying 100% of the premium and that they be covered by short and long term income protection plans. It is further its position that in the subsequent contract year a dental plan should be introduced for part-time employees. It is the Union's submission that the Board has jurisdiction to deal with this issue under the Act and denied the Employer's assertion that this area of dispute had been withdrawn at bargaining and asserted that it was specifically

referred to arbitration, which was set out in Article 38.02 in the preamble to Schedule B, in which it claimed the benefits would apply to all part-time employees. The Union referred to the stated position of the Government in March 1984 that regular part-time employees would have wider access to improve right's benefits, as well as to the arbitration dealing with the Working Conditions and Employee Benefits in the Public Service (Swan, May 23, 1985); Re: Municipality of Metropolitan Toronto and C.U.P.E., Local 79 (Picher, February 15, 1985).

It was the Employer's submission that the Union presented a new position on this issue at the hearing, that all part-timers should receive all benefits with the exception of the dental plan. In its submission, the Union was initially proposing such benefits apply only to those who worked for 33 hours in a week or more and not to all employees. The Employer submitted that the Board did not have jurisdiction to entertain the Union's proposal, as it was not in dispute at the time the matter was referred to arbitration. On the merits, the Employer submitted that the cost to extend the benefits to all part-time employees as requested by the Union, is excessive and that in any event in the absence of direct discussion by the parties on this issue, it would be premature for the Board to

impose any amendment to Section 10.

The Board finds that it does have jurisdiction under the Act to deal with the issue of part-time benefits, as it is a matter of dispute brought to the Board's attention, which has not been agreed to by the parties.

It has become obvious in this Province and elsewhere that part-time employees in the public sector at least, will be accorded some measure of benefit coverage similar to those covering full-time employees. As the employees of this Employer are in the public service covered by the Act, on that basis alone there is support to extend the equivalence of benefits to part-time employees as referred to in the Swan award. Part-time employees covered by this collective agreement therefore should be covered by benefits to the extent that provincial employees enjoy the protection applicable to the three specific benefits listed in Schedule 10 with the addition of a short term sickness plan and a long term income protection plan. In deciding however that such changes are merited to these working conditions, such benefit changes cannot be made retroactively, in that coverage for such eligible employees could not be obtained in that manner. We have also considered for the term of this collective

agreement the effect of the costs involved, not only in a retroactive application of an increase in benefit coverage, but also as to an increase to the Employer of any increase in its share of the premium costs. As there is apparent in this issue a substantial area of the mechanics to implement the benefit coverage to be considered, it is our opinion that this particular item must be referred back to the parties for consideration in future bargaining before implementation of any changes to Section 10 for part-time employees. For these reasons, the Board awards that there shall be no change to Section 10 of Schedule B for the term of this collective agreement.

RETROACTIVITY

The Board awards that:

All employees as at April 1, 1984 shall be entitled to be paid the increase to wages awarded herein on all paid hours from that date. Except as agreed directly by the parties or as otherwise specifically dealt with in this award, all other changes to the collective agreement shall become effective as and from the date of the award. Any employees as of April 1, 1984 who have since left their employment for any reason shall be entitled to a pro rata share of the increase

from April 1st, to the date of their termination. All new employees since that date shall be entitled to the increase from the date of their hire. All former employees shall be notified by the Employer in writing with a copy to the Union within 15 days from the release of this award to the parties of their right to claim such retroactive wage increases. Such employees will have thirty days (30) only from the date the notice is mailed to them to claim the retroactive adjustment, following which such claim shall be deemed to have been abandoned. Such notices shall be mailed to the employee's last known address on the records of the Employer.

At the hearing, the Union submitted that the Board should award interest on the increased wage adjustment retroactive to April 1, 1984. The Board finds that an award of interest is not appropriate in the circumstances of this case and rejects the Union's submission.

The parties are directed to forthwith cost this award for the submission to the Inflation Restraint Board as required under Bill 111. The Board retains jurisdiction until the collective agreement is in effect between the parties.

The Board directs that this award be implemented within 60 days from its release to the parties.

DATED AT OAKVILLE THIS 24th DAY OF OCTOBER, 1985.

H.D. Brown
H.D. BROWN, CHAIRMAN

A. CORMIER, EMPLOYER NOMINEE

W.A. Vincer
W.A. VINCER, UNION NOMINEE

ADDENDUM

As the employer nominee, I disagree with this award's language with respect to parity of wages between GO Transit and the Toronto Transit Commission. Much of the evidence submitted emphasized the similar skills required of TTC and GO Transit employees, but I feel not enough weight has been placed on the fact that in addition to driving diesel buses, TTC personnel are also trained to operate trolley buses, streetcars and subway trains as well as acting as guards on the subway trains. It follows, therefore, that the skills required of drivers at the TTC are far more extensive than those required of drivers at GO Transit. Accordingly, the argument for wage parity is not valid and this award should have not concluded that parity should be achieved in the course of time.



A. Cormier
Employer Nominee
October 23, 1985

T/0060

IN THE MATTER OF AN ARBITRATION UNDER
THE CROWN EMPLOYEES COLLECTIVE BARGAINING
ACT

B E T W E E N :

THE ONTARIO PUBLIC SERVICE EMPLOYEES
UNION

- and -

THE CROWN IN RIGHT OF ONTARIO
(TECHNICAL SERVICES CATEGORY)

- NO. T/60/84

BOARD:

Martin Teplitsky, Q.C.,

G. J. Milley

G. Beaulieu

APPEARANCES:

On behalf of the Union: Andrew Todd, Bob Hebdon
Robert Anwyll, Carole L. Parry
Lionel Leroux, Fred Nice,
Wayne G. Helson, Keith Nicholas
Dave Gilders

On behalf of the Employer: Paul Mooney, Elsie Moolgroker
Anne McChesney, Miriam Irwin,
G. (Syd) Feeley, J. Bebbington

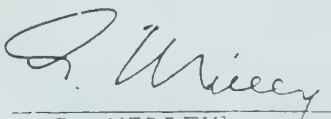
Hearing held at Toronto on August 13, 1985.

For reasons which appear in the award between the Scientific and Professional Category and the employer, I would award an increase of 4.25 per cent retroactive to January 1, 1985 to be paid as soon as practicable inclusive of the 3% interim award. If there is any undue delay, the Board may be spoken to and we will remain seized for such purpose.

A claim for a special adjustment is made for the medical and x-ray technicians based on a comparison with Registered Technologists in the public hospitals. After applying the wage increase herein awarded, the difference in start rates between a Medical Technician 2 and a Registered Technician 1 is more than \$80.00 a week. This disparity must be reduced. Accordingly, I would award an additional increase to the medical and x-ray technician groups of 10% retroactive to July 1, 1985. We will remain seized if any problems in implementation arise.

DATED this 20th day of November, 1985.


MARTIN TEPLITSKY, Q.C.
Chairman


G. MILLEY


G. BEAULIEU

IN THE MATTER OF AN ARBITRATION

B E T W E E N :

THE ONTARIO PUBLIC SERVICE EMPLOYEES
UNION

- and -

THE CROWN IN RIGHT OF ONTARIO
(CORRECTIONAL SERVICES CATEGORY)

- NO. T/62/84

BOARD:

Martin Teplitsky, Q.C.
Chairman

G. Milley

Wm. Walsh

APPEARANCES:

On behalf of the Union: Andre Bekerman
Jim Onyschuk, Ron Barger,
Len Hupet, Larry Lameront,
Gerry Dick, Kenneth L. Lee,
Paul Lane, Michael J. Culkeen.

On behalf of the Employer: W. J. Gorchinsky,
Director, Staff Relations Branch
E. Moolgoakar

Hearing held July 12, 1985 at Toronto.

This interest arbitration raises once again -- indeed it seems a perennial problem -- what relationship, if any, should exist between the salaries of correctional officers and constables in the Ontario Provincial Police.

The Union's position that the disparity between these groups must be narrowed has over the years, attracted considerable support from politicians, officials of the government, judicial officers, and arbitrators. Nevertheless, in part because of the restraint legislation in the province, the differential has continued and for all practical purposes has not been reduced. This is the first year, in the past three that there has not been any restraint legislation in force at the time of the arbitration.

Over the years the suggestion of an independent job evaluation has been raised. It was raised again at this arbitration. The Union supported the suggestion and the employer opposed it. While I do not entertain any doubt of my jurisdiction to order such an evaluation, the practical reality is that I am without any funds to pay for it and my jurisdiction to direct the parties to pay for it is at best doubtful. In any event, I have now concluded that a job evaluation would not materially assist in the resolution of this dispute. My reasons for reaching this conclusion are as follows.

Having studied the briefs and having heard the evidence of the witnesses, I am satisfied that correctional officers are not comparable to O.P.P. Officers in terms of the nature of the principal duties performed by each group. Although both groups work in the administration of justice in the province, the principal functions of the O.P.P. constable are to prevent crime and to apprehend criminals. On the other hand, the principal functions of correctional officers are to prevent prisoners from escaping, to direct their activities within confinement and to aid in their reformation. The skills required for each set of duties are quite different. These groups are not comparable so as to invoke the "equal pay for equal work principal". Indeed, Mr. Yule, who testified on behalf of the Union and who had performed a C.W.S. study on both groups placed the correctional officers some five steps below the O.P.P. Officers. I will return to his evidence later in this award. I recognize that comparability in interest arbitration is also used to describe a situation where, although the duties of the two groups are different, it has been determined that the value of their work is approximately the same. Firefighters and police constables in Ontario offer an example. I note that the political, judicial and arbitral support the correctional officers have received has asserted a need to narrow the gap between their salaries and those paid to O.P.P. Officers. There has been no suggestion that the work of the correctional officer is equal or approximately equal in value to that of the O.P.P. Mr. Yule's

testimony placed the correctional officer five steps lower than an O.P.P. Officer. His study showed a twenty-five step progression. Each step based on the actual hourly rates in the government service from top to bottom would be worth approximately 40¢. In other words based on Mr. Yule's testimony, a differential of \$2.00 an hour or approximately \$4,000.00 per annum would be quite appropriate.

Of considerable significance is the fact that there is a large group of employees in the federal sector, namely, custodial officers, who are directly comparable with correctional officers. For all practical purposes they do the same work. Their rates vary from minimum and medium security institutions to maximum security institutions. In Ontario there is only one rate. Some of the Ontario institutions in my respectful opinion are the equivalent of the maximum security institutions federally and may provide working conditions even less desirable. Rather than introduce a two-tier wage scale in Ontario I have taken the federal rates and chosen the medium between the minimum and medium and maximum. I have naturally increased this rate by 3% to reflect a presumed 1985 increase.

This exercise generates an hourly rate of \$14.60 and provides an increase overall of approximately \$4,000.00 per annum at maximum. This leaves these employees approximately \$4,000.00 below the O.P.P. rate. Thus, whether I approach the question from the perspective of Mr. Yule's

C.W.S. study or from the perspective of comparability with the federal guards, the result is approximately the same.

I have concluded that I should achieve approximate parity with the Federal service in this award. My practice has been, generally speaking, where a differential has existed for a long period of time not to adjust it fully in one round of bargaining. I have departed from this principal in this case for the reason that these employees have been struggling to reduce the differential with the O.P.P. for many years. It has not been their fault that the differential has not been reduced. There have been many promises that the differential would be reduced. I find no valid reason to require that they wait longer. However, because the necessary increase is large and because this is only a one year agreement, although I am awarding the entire increase in the award, I am deferring part of its implementation to 1986. Naturally, whatever may be bargained or arbitrated in 1986 will be in addition to that part of this award which is not to be implemented until 1986. In my opinion, therefore, an appropriate salary in 1985 for C.O. 2 would be as follows: The present rates after the 3% January 1st interim increase which we are awarding are 12.57, 12.89 and 13.33. The one year rate will not be further increased because with a 3% increase it is substantially in accord with the federal rates. Effective September 1st, 1985,

the second year rates will be \$13.30 and the third year rate will be \$13.90. Effective January 1st, 1986, the second year rate will be \$13.70 and the third year rate will be \$14.60. As previously noted, the rates here established for 1986 are in fact 1985 rates which are not to be implemented until 1986 to the extent indicated. To these rates the increases negotiated or arbitrated in 1986 will be added.

I appreciate that we have not dealt with many of the other rates between these parties. We will remain seized if the parties are unable to work out a satisfactory arrangement with reference to all of the other rates.

DATED the 27th day of November, 1985.


MARTIN TEPLITSKY, D.C.


GEORGE MILLEY


WILLIAM WALSH

T 63/87

IN THE MATTER OF
THE CROWN EMPLOYEES COLLECTIVE BARGAINING ACT,
R.S.O. 1980, c. 180

AND IN THE MATTER OF AN INTEREST ARBITRATION

BETWEEN THE CROWN IN RIGHT OF ONTARIO
(the "Employer")

AND THE ONTARIO PUBLIC SERVICE EMPLOYEES UNION
(the "Union")

AND IN THE MATTER OF THE GENERAL OPERATIONS WAGE BARGAINING
CATEGORY

Board of Arbitration

Ross L. Kennedy	Chairman
George Milley	Employer Nominee
Brian Switzman	Union Nominee

APPEARANCE FOR THE EMPLOYER:

Michael Milich	Staff Relations Officer and Spokesman
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APPEARANCE FOR THE UNION:

André Bekerman	Negotiator and Spokesman
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A HEARING WAS HELD AT TORONTO ON AUGUST 15, 1985.

A W A R D

This is an arbitration involving the wage rates and certain other issues that remain in dispute between the parties relating to employees in what is known as the General Operations Category of the Government of Ontario. For the purpose of wage negotiations, the total bargaining unit is divided into nine occupational categories, and each category bargains separately with respect to wages and certain other matters relating to the terms and conditions of employment. This category comprises 3399 employees in total and in terms of compensation levels is the second lowest paid category within the Provincial Civil Service. The salaries range from a minimum of \$293.80 per week to a maximum of \$641.34 per week with the lower ranges of the salary scale being the most heavily populated. The average weekly salary is \$376.00 per week. Forty-two percent of the employees in the category are women. In general, employees in the category provide personal, domestic, caretaking, security and custodial services in Ontario Government buildings and institutions. In addition, there are positions involving the performance of manual and semi-skilled work and of inspectional and consultative activities related to agricultural programmes. The category contains 1259 cleaners, 634 food services helpers and 183 laundry workers.

The wage rates and certain other matters relating to this category for the year ended December 31, 1984 were determined by a board of arbitration chaired by Lita-Rose Betcherman, which award was dated December 11, 1984. The parties were in agreement that with respect to this arbitration the wage rates and other matters which we establish would be for the year ended December 31, 1985 and that any wage increase awarded would be retroactive to January 1, 1985. Accordingly, our award with respect to the term and retroactivity will be as agreed to by the parties. The matters in dispute between the parties are in the following areas:

1. Wage Rates
2. Provision for a cost of living allowance provision in the Collective Agreement
3. Specific adjustments to certain wage rates
4. Time for implementation and provision for interest

We will deal with those matters in that order.

1. Wage Rates

The Union proposal is for an 8% increase in wage rates throughout the category, provided that there would be a

minimum increase to all employees in an amount equal to 8% of the average wage rate within the category. In other words, employees would receive the greater of an 8% increase or a dollar and cent increase equivalent to 8% of the average wage of \$376.00. The Employer position was that there should be a 3% percentage increase applied across the board to all wage rates in force as of December 31, 1984. All nine of the wage categories have proceeded to arbitration for the 1985 contract year, and this board has had the benefit of reviewing the decision of the board of arbitration chaired by Michel G. Picher released August 16, 1985 in relation to the Administrative Services Wage Bargaining Category. In that award Mr. Picher summarizes the various arguments advanced by the parties relating to economic indicators, measures of productivity, predictions as to inflation rates, and statistical data relating to settlements elsewhere both in the public and private sectors. Similar information and arguments were advanced to us in the briefs filed by the parties and in the oral submissions on the hearing, and nothing would be served by repeating Mr. Picher's excellent review and analysis of those materials and factors. The general principles of arbitral jurisdiction and determination have also been accurately summarized in the Picher award. The information and material submitted to us, however, relating to the General Operations Category contains some significant information that

apparently was not a factor in the Administrative Services decision. In particular, the Union brief contains much material drawing wage comparisons between certain benchmark positions within the General Operations category and similar positions in Ontario Hydro and in the unionized sector in general in Ontario. These figures would indicate an unfavourable differential in wage rates when the positions within the Ontario public service are compared to patently equivalent jobs elsewhere both in the public and private sector. The Employer challenged Hydro as being an appropriate comparison and further argued that the comparability of the jobs in Hydro and in the public and private sectors was not adequately established in the Union materials. Certain comparisons with Labour Canada statistics were also filed by the Employer on the hearing.

It would be our view that the Picher award accurately describes and evaluates much of the information and argument that was presented to us in the briefs of the parties and on the hearing. Had the material been limited to what is reviewed by Mr. Picher, we would have no hesitation in adopting his rationale and conclusion as to an appropriate level of wage increase. However, it is trite to say that the determination of the appropriate wage level is not a matter that can be determined with mathematical precision or that may be based on

any single factor or guideline. Rather, such a determination involves some degree of subjective evaluation of the data and materials provided and a consideration of all factors, some of which may be conflicting in their effect upon the ultimate wage level. At best, a board of arbitration must determine a reasonable range within which the wage level should fall, and the process of then defining the specific wage increase within that range becomes to some extent a matter of subjective evaluation. It is necessary to give a weighting to the various criteria, and the ultimate conclusion can in no sense be scientific or precise. On the evidence and arguments made to us, we would find that there is one significant additional factor that was not present in the Administrative Services case, and that relates to the external comparisons of wage rates provided by the Union. While those comparisons are in no sense precise, they are in our view sufficient to give a general indication that the wages in this category are falling behind the wages paid to comparable employees elsewhere. The comparisons relate to bench mark positions within the category. They are not limited to discrete groups as was the case considered by the board chaired by Martin Teplitsky relating to the Scientific and Professional Category, which award was dated August 22, 1985. The statistical differentials indicated by the Union were indeed substantial and in most cases were in the range of 5% to 15%. The differentials with respect to Ontario Hydro were in general higher. We would agree that to be precise as to the degree of differential in a mathematical

sense would require significantly more information relating to specific job descriptions and job matches, but we find in the Union material sufficient to indicate that in general there is, in fact, such a differential unfavourable to this wage category. There is no intent in this award to define the exact extent of that differential or to make it up by reason of this award, but it does represent another significant criterion which must be taken into account in determining where within the range of reasonableness our arbitrated wage rate will fall. Mr. Picher specifically recognized on pages 11 and 14 of his award that such a consideration was not present with respect to the Administrative Services Category.

It may also be noted that while the information filed would indicate that generally within the private sector, wage settlements during the first quarter of 1985 averaged out at approximately 4.1%, there were, in fact, numerous settlements reached in 1985 containing significantly higher rates of increase. Many of these have been set out in the Union brief submitted on the hearing. Examples may be pointed to of settlements involving employees who are subject to The Crown Employees Collective Bargaining Act, and in particular reference may be made to the contract between Ontario Housing Corporation and Canadian Union of Public Employees containing a 5% wage increase, and the contract between the Ontario Educational Communications Authority and its employees containing an increase of 6.4%. This same Employer reached a

settlement with respect to the Ontario Provincial Police which again reflects a higher level of increase than the statistical average. To evaluate each individual settlement would, of course, require information as to the specific considerations leading up to that settlement, but this again indicates that the particular circumstances of any collective bargaining group may well justify a settlement in excess of statistical norms for the economy as a whole.

In the Picher award consideration was also given to the basis upon which the settlement should be applied. Specifically in that case the percentage increase awarded was 4%, but it was applied on the basis of an across-the-board dollars and cents increase calculating by applying the 4% to the average salary in the category. This obviously has the effect of giving those below the average an increase of greater than 4% and to those above the average an effective increase of less than 4%. We would adopt Mr. Picher's analysis as to the desirability of avoiding wide wage gaps and wage compression that will be the result of consistent percentage increases or across-the-board increases. However, it must be remembered that Mr. Picher was dealing with a wage group where in general wage levels were high. In the sense of equity, it can, therefore, be justified that lower rates of increase be given to highly paid employees and greater rates of increase

effectively be given to the lower wage categories. In the General Operations Category past increases have generally been on the basis of a percentage across the board, and accordingly we would accept the principle that it is appropriate in this year to have a minimum across-the-board increase. However, since in general the overall wage levels in this category are not high, those earning more than the average income ought nonetheless to receive the percentage increase awarded. Accordingly, it will be our award that the wage increase will be the greater of the specified percentage or an across-the-board dollars and cents increase calculated by applying the percentage awarded to the average wage as at December 31, 1984 of \$376.00.

With respect to the rate of increase itself, it is our conclusion that based on all of the information and material provided to us, and considering all of the various factors which go into the determination of an appropriate wage level, we would award an increase in percentage terms of 5%. We believe that this recognizes the general trends elsewhere in the private and public sectors and gives some recognition to the disparity in wage rates that exist between this group and employees elsewhere performing similar duties. All wage rates existing as at December 31, 1984 will be increased by the greater of 5% or \$18.80. As requested by the Union, this board would further express its intent that if by result of some

other arbitration process or for some other reason the salary rates payable as of December 31, 1984 are hereafter altered, there will be a commensurate alteration in the rates for 1985 that are herein set. We will remain seized to deal with any matter relating to the implementation of this award or the determination of appropriate rates should the parties not be able to agree upon same.

2. Cost of Living Allowance

The Union is requesting that there be included in the Collective Agreement a clause to the effect that if the parties should negotiate a Collective Agreement for a term of operation in excess of one year, a cost of living allowance clause will become a part of such agreement. With respect we see no merit whatsoever in that proposal. This board has no jurisdiction to determine terms and conditions of employment in future years, and a cost of living allowance clause is totally inappropriate in a Collective Agreement for a one-year period that is, in fact, being determined by arbitration this late in the year. This matter may be appropriately dealt with at such time as the parties decide to go to a long-term agreement.

3. Specific Wage Rate Adjustments

Specific and further wage adjustments were requested by the Union, wherein an additional 10% increase was sought for cooks, bakers and butchers, realignment was sought between tailors and sewers, and further adjustments were sought with respect to laundry workers, food service helpers, canteen operators, lab attendants and security officers. The Union arguments were based on certain external comparisons, particularly with Ontario Hydro, and with respect to certain of the classifications having many women as incumbents, the claim rested on the argument of equal pay for work of equal value. The information provided, however, in making job matches and in evaluating work was limited to comparisons of class standards and job descriptions per se and contained no appropriate job matching related to a study of the specific jobs being compared as they were performed. Written job descriptions alone are notoriously unreliable in comparing actual jobs as performed, in view of the fact that words, such as supervision, can mean very different things to different employees and even to the same employer in different circumstances. It is our view that job matching, if it is to be used in the precise sense of justifying specific percentage increases in wages, as opposed to simply establishing a general consideration for an overall wage increase, must include an actual on-site evaluation of

what job duties are performed and how they are performed. Similarly, standards of evaluation and measurement in determining equivalencies must be specified. This is equally so in the case of an argument that is based on the concept of equal pay for work of equal value with the added complexity that the determination of the measurement standards creates very significant difficulty. The Union material is sufficient to create a very strong suspicion that there does indeed exist a need for a close look at these classifications and a consideration of adjustments. This has already been recognized with respect to this category in the prior arbitration decision of Ms. Betcherman, and she specifically recommended that the parties conduct or cause to be conducted proper job evaluations. It would be hoped that that type of exercise would be pursued jointly by the parties, but if the parties are unable to secure that type of co-operation, then the party wishing to make a change has no alternative but to complete the necessary studies on its own and raise same in the context of future negotiations and arbitrations. While we have significant sympathy for the claims asserted by the Union in these classifications, we have not been given sufficient material upon which to base any reasonable adjudicative determination of the issues involved. On the equal pay for work of equal value aspect of the argument, it would appear likely that the parties will be receiving specific legislative direction in the near future, and they will have to act in

accordance therewith. Accordingly, we would not be prepared to make any award with respect to the classification adjustments claimed by the Union.


4. Time Frames for Implementation and Interest

The material contained in the Picher award on these issues accurately reflects the information and arguments placed before us in the briefs and on the hearing. In the Union brief it is true that the claim for interest was, in fact, made commencing from February 18, 1985, the date of the Provincial Treasurer's statement indicating that wage increases would be limited to 3%. The effect of that statement, said the Union, was to preclude any further legitimate process of negotiation and to frustrate totally the process of free collective bargaining. The arguments in the brief claim interest from that date, and the rationale is substantially that it be payable as a punitive measure, which is clearly contrary to arbitral authority as to the appropriateness of awarding interest as compensation only. The Union's argument on the hearing was in substance that the results of this award be implemented within a period of 30 days and that interest become payable thereafter until retroactive funds were, in fact, received. This time the rationale was that the Employer had the use of the money, the Employees were denied its use, and

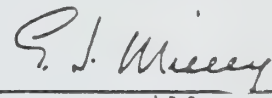
equitable compensation required that interest be paid. With respect to the implementation date and the issue of interest, this board is prepared to adopt the reasoning set out in the Picher award. Accordingly, it would be our award that the wage increase awarded herein is to be implemented in a maximum of 60 days from the date hereof, and that requirement is to be a term of the Collective Agreement that will result from this award.

DATED this 10th day of October, 1985.

I concur with addendum attached



Ross L. Kennedy



George Milley

I dissent with dissent to follow

Brian Switzman

Crown/Ontario and The Public Service Employees' Union
Addendum to GENERAL OPERATIONS wage award

At first blush, I was inclined to write a dissent to the award because, in my view, something less than a five percent increase would have been more appropriate. However, on reflection, I decided to concur with the chairman and make the following observations.

The award relies, primarily, on two common criteria of wage determination; external comparison of rates and prevailing trends in wage settlements.

Quite correctly, it notes that significantly more information relating to job descriptions and job matches is necessary to assess comparative rates. Thus, I view the data supplied by the union as insufficient to justify a significant wage increase.

Absent reliable information on comparative job rates, I would accord wage settlement data added importance. However, data compiled by one party or the other must be regarded as self-serving and directed toward a subjective purpose.

As indicated, private sector settlements data published by the Ontario Department of Labour for the first quarter of 1985 averaged out at 4.1 percent. No doubt, as stated, there were numerous settlements containing significantly higher increases. Conversely, there must have been many lower settlements as well.

I think that one other aspect of the award merits comment. It states:

"In the sense of equity, it can, therefore, be justified that lower rates of increase be given to highly paid employees and greater rates of increase effectively be given to the lower wage categories."

I have some difficulty with this philosophy. The existing wage structures of the categories are the result of Job Evaluations and past settlements, freely negotiated by the parties or otherwise. Thus, it is reasonable to conclude that the rates reflect, in general, the duties and responsibilities of the positions. In such circumstances, I would be most reluctant to assume a Robin Hood role and run the risk of discrediting by distortion, a recognized rate system

that has evolved over a number of years.

I would note, however, that the application of wage increases on an alternating percentage and across-the-board dollar basis makes good sense and has the effect of preserving existing rate differentials.

Respectfully submitted,

George Milley

George Milley

October 1, 1985

T/67/84

IN THE MATTER OF THE CROWN EMPLOYEES COLLECTIVE BARGAINING ACT
AND IN THE MATTER OF AN ARBITRATION

B E T W E E N:

ONTARIO PUBLIC SERVICE EMPLOYEES UNION

- and -

THE CROWN IN RIGHT OF ONTARIO

AND IN THE MATTER OF THE INSTITUTIONAL CARE CATEGORY

BOARD OF ARBITRATION

JANE H. DEVLIN

CHAIRMAN

GUY BEAULIEU

UNION NOMINEE

GEORGE MILLEY

EMPLOYER NOMINEE

APPEARANCES FOR THE UNION

André Bekerman

Chris Schenk

Barry Doyle

George Salovaara

Janet Holonka

Brent McHail

Pat Johannink

APPEARANCES FOR THE EMPLOYER

Mike Milich

Nancy Robinson

Elsie Moolgaokar

Miriam Irwin

Sally Kelly

Karen Braybrook

This Board was constituted to resolve a dispute between the parties concerning wage rates for employees in the Institutional Care Category, one of the nine categories in which the bargaining unit is divided for purposes of salary negotiations. The parties are agreed that the Board's award will cover the period from January 1, 1985 to December 31, 1985 and there would also appear to be no dispute with regard to the matter of retroactivity.

There are approximately 5,254 employees in the Institutional Care Category who are involved primarily in the care and custody of adult and juvenile wards in Ontario psychiatric hospitals, mental retardation centres and of students of schools for the blind and deaf. Duties performed by employees in this Category include the training of patients in personal hygiene and behaviour; assisting in providing practical nursing care; and accompanying patients on field trips to various community events.

The Category is composed of 33 classifications, with Counsellors 1-3 (Residential Life) accounting for 2,545 employees, and the classifications of Psychiatric Nursing Assistant 1-4 being occupied by 1,404 employees. These classifications represent 48.4% and 26.7%, respectively, of the total Category population.

The average salary for the Institutional Care Category is \$414.10 per week or \$21,608.00 per annum. Salary rates within the Category range from a low of \$283.77 per week for Child Care Assistant 1 to \$556.75 per week, which is the maximum rate in the range for Child Care Worker 4.

There are a number of issues in dispute between the

parties and we shall deal with these in the order in which they were presented.

I - GENERAL WAGE INCREASE

The Union proposed that there be a general wage increase to all rates in the Category of \$37.00 per week, which represents an increase of 8.9% on the average salary as of December, 1984. There were essentially four factors advanced in support of the Union's position, which were stated as follows:

- "(i) the remarkable economic growth of Ontario;
- (ii) the anticipated rise in the cost of living during 1985;
- (iii) the underpayment of the members of this Category in comparison with equivalent others, both inside and outside the Ontario Public Service; and
- (iv) an examination of two of the most numerous classifications as representative of the Category's increased work load and productivity."

It was the submission of the Union that Canada's economy has recovered from the recession of 1981 and 1982 and that employees in the Institutional Care Category are entitled to share in that recovery. Mr. Bekerman also proposed that the Board consider economic trends as

projected by key forecasters and, in this regard, made reference to a poll reported by the Toronto Star in December of 1984, in which real growth for 1985 was projected at 2.6%. Regardless of any change in the economy, however, it was contended that employees in this Category are entitled to maintain their buying power.

It was the further submission of the Union that we ought to give consideration to both increases in the cost of living and wage settlement trends. In this respect, the Union pointed out that the Consumer Price Index in the first three months of 1985 averaged 3.7%, with the rate increasing in April and May to 3.9%. The Union suggested that inflation forecasts for 1985 range from 3.5% to 5%. The Union also provided data reflecting the average annual percentage increases in base rates in collective agreements (excluding construction and without cola) covering 200 or more employees negotiated between 1980 and 1984. In 1984, the data reveal an average annual increase in private sector agreements of 3.9% and in public sector agreements of 4.8%, with the average increase in both sectors being 4.6%. Mr. Bekerman also referred to a number of settlements in the early months of 1985 and submitted that these reveal a distinct upward trend.

The most populous classifications in the Institutional Care Category are those of Counsellor 2 (Residential Life) and Psychiatric Nursing Assistant 2. Employing these classifications as representative of the Category as a whole, the Union engaged in two comparisons. The first involved a comparison of compensation levels for equivalent classifications in other provinces of Canada. Mr. Bekerman submitted that a comparison of the wage levels of employees

in the Counsellor 2 (Residential Life) classification or its equivalent in Manitoba, Quebec, British Columbia, Alberta and Saskatchewan reveals an average wage rate of 25.1% above the wage rate paid in Ontario. A similar comparison for the classification of Psychiatric Nursing Assistant 2 reveals an average wage rate of 8.18% above that paid in Ontario.

The second comparison engaged in by the Union was one which was internal to the public service but external to the Institutional Care Category. It was submitted that within the public service, there are a number of classifications in which the training, job functions and expertise overlap extensively with those of the classifications of Counsellor 2 (Residential Life) and Psychiatric Nursing Assistant 2. One of these classifications is Supervisor of Juveniles. Despite the similarity in job duties, it was submitted that there is a dramatic difference in compensation, with the Supervisor of Juveniles receiving 24.2% more than the wage rate paid to Counsellors 2 (Residential Life) and Psychiatric Nursing Assistants 2. The Union contended that comparability arguments may also be made with a number of other classifications and that, where responsibilities overlap, dramatic differences in compensation levels cannot be justified.

The fourth factor relied upon by the Union in support of its wage proposal was productivity. It was submitted that productivity can be quantified and is an appropriate factor to be considered in determining an increase in wage rates: The Ontario Public Service Employees Union and The Crown in Right of Ontario; Institutional Care Category; October 24, 1984 (Brown). Both on the basis of oral evidence at the hearing and data with regard to bed

closures and the changing nature of the resident population, it was submitted that key facilities for the developmentally handicapped have become increasingly overcrowded and that there is a proportionately higher number of "hard to serve" residents as was the case in the past. This has demanded greater productivity and placed greater stress on employees in the Institutional Care Category.

There was one further issue raised by the Union which relates to the Employer's ability to pay. It was the submission of the Union that this factor cannot have the same significance in the public sector as it has in the private sector. Public sector employees ought not to be required to subsidize the community by accepting wages which are substandard in comparison to those paid to their counterparts in the private sector. Mr. Bekerman suggested that ability to pay should not be a significant or even a governing factor in our determination of the increase appropriate for employees in the Institutional Care Category.

The Employer proposed a 3% wage increase and opposed the Union's suggestion that this be applied as a flat dollar and cents increase across the board on the basis that this would unduly compress wage rates within the classification. The Employer rested its submission in support of a 3% wage increase on three bases:

- "(i) the economic climate as reflected
by settlements in the private sector;
- (ii) the internal relativity of the rates
of classifications in this Category
with other categories; and

(iii) the ability of the Employer to recruit and retain qualified employees."

It was the submission of the Employer that the private sector is constrained by market forces and that wage settlements in this sector are the most accurate reflection of the state of the economy in the context of collective bargaining. It was contended that private sector settlements are an appropriate yardstick by which employees in the public sector ought to measure their expectations. On the basis of a comparison of rate increases to labour market statistics between 1981 and 1984, Mr. Milich submitted that wage increases in the public sector have consistently exceeded those in the private sector and that this has also been true for employees in the Institutional Care Category. The increases received by such employees have also outstripped increases in the Consumer Price Index over comparable periods.

Mr. Milich pointed out that the Labour Canada Report for the first quarter of 1985 reveals average settlements in the private sector of 2.5%. In addition, it was submitted that the Conference Board of Canada forecasts a growth rate of 2.7% for Ontario in 1985, as compared with a rate of 6.4% in 1984. It was submitted that there is no reason to believe that there will be any significant upward trend in wage settlements in 1985 and that, on the contrary, wage increases will be down somewhat from 1984. In this regard, Mr. Milich referred to a survey conducted by Canadian Labour Views, in response to a questionnaire in May of 1985, reflecting general increases averaging 2.9%, which is to be contrasted with increases of 4% at the same time in 1984. Mr. Milich also pointed out that the Consumer Price Index averaged 3.7% in the

first quarter of 1985 but suggested that there is, by no means, an automatic entitlement to an equivalent increase in any event.

Relative to other categories, Mr. Milich submitted that employees in the Institutional Care Category have fared well in terms of wage increases. It was contended, however, that internal comparisons of job classifications, such as those engaged in by the Union, are inappropriate as the Union has insisted upon separate negotiations for each category. It was also the position of the Employer that the Board has no jurisdiction to address relativities among jobs in different categories as this necessitates some valuation of the positions under consideration which is the proper subject of job evaluation and not the task of this Board. Mr. Milich further submitted that it is inappropriate to base a salary increase for an entire category on a comparison of one or two classifications within that category, as proposed by the Union.

As a final matter, the Employer submitted that the Board ought to consider the Employer's ability to recruit and to retain qualified employees. In this regard, Mr. Milich pointed out that in 1984, 580 employees, or 11.1% of the employees in the Institutional Care Category, left the Ontario Public Service. Only 19 employees in this group or less than one-half of 1% indicated the reason for leaving was a move to a better-paid position. Mr. Milich also referred to a number of competitions held for openings in classifications in the Institutional Care Category in support of his submission that the Employer has experienced no difficulties with recruitment or retention which could be described as salary-related.

Having considered the submissions of the parties, we shall begin by setting out those factors which have played a significant role in our determination of the wage increase which we propose to award. Firstly, we have considered freely-negotiated settlements in the private sector in Ontario. In the absence of the right to strike for public sector employees, these freely-negotiated settlements are the best indicator of the wage increases produced by the interplay of market forces. We are also of the view that wage increases in the public sector cannot be overlooked. Some of these, of course, are freely-negotiated and, even in those which have resulted from an arbitration awards, there appears to be a general recognition of the importance of comparability with wages paid to employees not subject to compulsory arbitration. While we have also considered federal data on wage settlements, we find this less meaningful than the data pertaining directly to the Province of Ontario.

In the final quarter of 1984, wage increases in the private sector in Ontario averaged 3.5%, with those in the public sector averaging 4.9%. As pointed out by the Union, the comparable figures for 1984 were 3.9% and 4.8%, respectively, with an average increase for all agreements of 4.6%. For the first quarter of 1985, wage increases in the private sector averaged 4.1%, while those in the public sector averaged 4.5%.

We have also considered monthly increases in the Consumer Price Index reported to date, together with projections for the average annual increase for the calendar year 1985. While recent increases have exceeded those in the early months of the year and, therefore, the average annual increase may well exceed 4%, it is unlikely that the figure will be as high as 4.5% as suggested by the Union.

While productivity is a factor in our award, we are not persuaded that an increase in productivity is a special circumstance which would justify our awarding an additional wage increase on the basis of this factor alone. Although the data provided by the Union does suggest an increase in productivity in recent years, this factor was considered by Mr. Brown in his award in 1984 to support an increase beyond that which he would otherwise have found to be appropriate. As is apparent from Mr. Brown's award, the Union pointed out that there had been a reduction of more than 13% of the employees in this Category, while the number of admissions, patients and average daily population had increased. It was also argued that the working conditions relating to members of the Category had deteriorated rapidly and that this was a matter which was appropriate for the Board to take into account. In view of Mr. Brown's award and the fact that some of the data provided by the Union covers a period for which special consideration has already been given, we are not persuaded that an additional increase is merited on the basis of productivity for the period covered by this award.

Having considered the submissions of both parties, general economic trends and with particular emphasis on the factors outlined, the Board has determined to award a general increase to all rates in the Category of \$18.00 per week across the board. This represents an increase of 4.35% on the average salary of \$414.10 per week. While the Board's award of a flat dollar increase as opposed to a percentage increase will have the effect of compressing wage rates,

a percentage increase has been applied for a number of years which, of course, has the opposite effect. The application of a flat dollar amount will serve to redress the imbalance created by a repetitive application of percentage increases.

II - SPECIFIC WAGE ADJUSTMENTS

(i) Ambulance Officers

The classifications of Ambulance Officer 1-4 cover employees who perform driving duties and provide casualty and life sustaining care to injured or sick persons in public ambulance services operated by the Provincial Government throughout the Province. The classifications are differentiated by the extent to which paramedical skills are utilized and leadership exercised.

It was the submission of the Union that Ambulance Officers ought to receive a specific wage adjustment in the form of an additional 5% increase as a step toward parity with Ambulance Officers employed by the Municipality of Metropolitan Toronto. In response, it was the submission of the Employer that Ambulance Officers in its employ provide service throughout the Province and, for this reason, comparison with a single employer, namely, the Municipality of Metropolitan Toronto, is inappropriate. It was submitted that the rates for Ambulance Officers 1-4 must be compared with rates paid by employers throughout the Province and, on this basis, the Employer is highly competitive.

Having considered the submissions of the parties, we do not find it appropriate to make an additional award in respect of Ambulance Officers. Although the Union seeks parity with Ambulance

Officers in the employ of the Municipality of Metropolitan Toronto, the reality is that the Union's members employed in this classification work throughout the Province of Ontario. In this respect, we agree with the Employer that the Ontario Public Service must be competitive with rates payable throughout the Province. The data presented reveal that this is the case and, accordingly, we make no additional award for the classifications of Ambulance Officers.

(ii) Air Ambulance Officers

It was the submission of the Union that specific consideration must also be given to Air Ambulance Officers who receive supplementary training and education yet have no distinct classification or level of compensation. Mr. Bekerman pointed out that one can only apply for the position of Air Ambulance Officer after two years' service as a Land Ambulance Officer. In addition, paramedic training and courses in high altitude indoctrination, survival training (including mapping techniques), meteorology and anatomy are required. In recognition of this supplementary training, the Union requested that Air Ambulance Officers be granted an additional 60¢ per hour beyond the 5% requested for Land Ambulance Officers.

It was the submission of the Employer that a full job evaluation and classification standards review would be required to determine what differences exist between Air and Land Ambulance Officers and whether they warrant different standards or a different scale of compensation. Mr. Milich pointed out that the parties have agreed to negotiate a job evaluation and classification system and suggested that the Union's proposal would be more appropriately brought to that forum.

Our determination with respect to the request for additional compensation for Ambulance Officers generally has been set out earlier in our award and, in the circumstances, we are not persuaded that it would be appropriate to grant an additional premium for Air Ambulance Officers. There may well be merit to the Union's submission that employees working in this capacity ought to receive a distinct level of compensation. The Board, however, was provided with insufficient information upon which to reach such a conclusion. In our view, a job evaluation is required and, whether this be accomplished through the vehicle currently under negotiation or in a separate forum, we would urge the parties to engage in a meaningful job evaluation and a comparison of the duties of an Air Ambulance Officer in relation to the duties and responsibilities of Ambulance Officers generally in order that a board faced with a similar request by the Union in the future be in a position to make an informed decision on the issue.

III - RESPONSIBILITY PAY

The Union submitted that some employees in the Institutional Care Category find themselves working without supervision for considerable periods of time and with some frequency. As a result, the Union requested that these employees be given special financial compensation, in addition to the Category-wide increase. It was the position of the Union that an allowance of 35¢ per hour would be appropriate where an employee is delegated supervisory duties in the absence of a Supervisor. It was the submission of the Employer that this request would have the effect of amending Article 6 of the Agreement respecting Working Conditions and Employee Benefits which

deals with temporary work assignments. The Employer suggested, therefore, that the matter is more properly the subject of a separate set of negotiations.

In our view, responsibility pay comes within the framework of working conditions which are the subject matter of another agreement between the parties. Accordingly, the Board makes no award in respect of the Union's request.

IV - STRESS DAYS

It was the submission of the Union that one of the effects of facility closures, deinstitutionalization, increased work-load and the difficulties inherent in working with the "hard to serve" is increased stress upon employees in this Category. As a step toward recognition of this problem, the Union requested that we grant two stress days per year. In response, it was the submission of the Employer that, once again, this is matter more appropriately addressed in negotiations pertaining to working conditions.

A request for the provision of stress days was made to the Board last year, which was chaired by Mr. Brown, and we would agree with his conclusion that this falls within the category of working conditions which constitutes a separate head of bargaining and it is thereby excluded from the Board's consideration.

V - IMPLEMENTATION AND INTEREST

The Union proposed a time frame for implementation of wage

increases of 30 days from the date of the award, following which the Employer would be directed to pay interest at the current prime rate on all unpaid monies. It was the position of the Employer, on the other hand, that implementation could not reasonably be accomplished in less than 60 days and that interest ought not to be awarded in the absence of culpable behaviour and that, in any event, there can be no recovery of interest against the Crown without enabling legislation.

The Employer has provided the Board with documentation which suggests that a 60-day period is necessary for purposes of implementation and it has not been demonstrated to our satisfaction that implementation can be accomplished in any lesser period. We, therefore, direct the Employer to implement the wage increase within a period of 60 days from the date of this award. We also find merit in the approach adopted by Mr. Picher in his award pertaining to the Administrative Services Category dated August 16, 1985 and direct that the period of implementation become a term of the Collective Agreement, the breach of which may be grieved by the Union.

While the Union also requested that we specify that the wage increase is to apply to all current and legally-correct salary schedules, ranges and rates, we prefer to direct that the increase be applied to all rates in the Category in effect on December 31, 1984. In the event that any question arises as to the appropriate rate, we will remain seized in relation to this issue.

In conclusion then, the Board awards an increase of \$18.00 per week to be applied to the wage rates of all employees in the Category which were in effect on December 31, 1984. This wage increase

shall be implemented within a period of 60 days from the date of this award. In the event that the parties require assistance in the implementation of this award or otherwise require clarification, we shall remain seized for this purpose.

DATED at TORONTO this 22nd day of November, 1985.

James H. T. T. T.
Chairman

"I dissent" - dissent to follow
Union Nominee

"George Milley"
Employer Nominee

T/0068/84-1
T/68/84

IN THE MATTER OF
THE CROWN EMPLOYEES COLLECTIVE BARGAINING ACT,
R.S.O. 1980, c. 180

AND IN THE MATTER OF AN INTEREST ARBITRATION

BETWEEN THE CROWN IN RIGHT OF ONTARIO
(the "Employer")

AND THE ONTARIO PUBLIC SERVICE EMPLOYEES UNION
(the "Union")

AND IN THE MATTER OF THE MAINTENANCE SERVICES WAGE BARGAINING
CATEGORY

Board of Arbitration

Ross L. Kennedy	Chairman
George Milley	Employer Nominee
Brian Switzman	Union Nominee

APPEARANCE FOR THE EMPLOYER:

Michael Milich	Staff Relations Officer and Spokesman
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APPEARANCE FOR THE UNION:

André Bekerman	Negotiator and Spokesman
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A HEARING WAS HELD AT TORONTO ON AUGUST 16, 1985.

A W A R D

This arbitration involves the determination of wage rates and certain other matters that remain in dispute between the parties relating to employees in what is known as the Maintenance Services Category of the Government of Ontario. For the purpose of wage negotiation the total bargaining unit is divided into nine occupational categories, and each category bargains separately with respect to wages. This category comprises 5433 employees and includes the unskilled, semi-skilled, and skilled trades and craftsmen employed in the Provincial Civil Service. The positions involve the maintenance and repair of many and varied types of equipment and plant and the operation of such equipment. As at December 31, 1984 the average weekly wage within this category was \$459.19. In terms of overall compensation levels the group sits approximately in the middle of the nine occupational categories recognized in the bargaining unit.

The parties are in agreement that the Collective Agreement that will result from this award will be for a period of one year expiring December 31, 1985. In addition, they are in agreement that the awarded wage increase will be retroactive for all employees to January 1, 1985. The matters in dispute between the parties are in the following areas:

1. Wage Rates
2. Specific classification adjustments to four groups of Skilled Tradesmen and to the Offset Equipment Operators
3. An increase of the tool allowance and its extension to other employees
4. Time for implementation and provision for interest

We will deal with those matters in that order.

1. Wage Rates

The Union proposal is for a 7.9% increase in wage rates throughout the category, provided that such increase would be split between a flat rate dollar and cent increase and a percentage. Each employee would receive an increase of \$18.32 per week plus an additional 4% applied to the rates that were in effect as at December 31, 1984. This has the obvious effect of giving those earning less than the average wage within the category an increase that is greater than 7.9%. The Employer position was that there should be a 3% increase applied across the board to all wage rates.

All nine of the wage bargaining categories have proceeded to arbitration for the 1985 contract year, and at this time

there exist three particular awards to which this board has given consideration in its deliberations. The award of the board of arbitration chaired by Michael G. Picher with respect to the Administrative Services Category was issued August 16, 1985. The board chaired by Martin Teplitsky with respect to the Scientific and Professional Category issued its award August 22, 1985. The members of this board were also involved in the arbitration with respect to the General Operations Category, and that award was issued October 10, 1985. As mentioned in the previous awards, the basic statistical and economic data and the various arguments based thereon were substantially the same with respect to all categories and are accurately summarized in the Picher award. There would be no point in repeating the contents of that award or the comments contained in the award with respect to the General Operations Category in this award. As in the case of the General Operations Category, the Union on this arbitration did file and rely on wage comparisons with employees performing comparable work in other sectors, both in support of a general wage increase and in support of specific classification adjustments. Comparisons were made to Ontario Hydro, Metropolitan Toronto, and the Workers Compensation Board, all large public sector employers, and to General Motors and Stelco Inc., very large private sector employers. The positions selected from the category represented, in our view, properly representative positions reflecting the category as a whole, and

those comparisons, as contained in the Union brief, do indicate a significant differential wherein the wages of this category are behind overall wage levels with the compared employers. These comparisons have undoubtedly been made with a view to the more highly paid areas of the public and private sectors, and undoubtedly other comparisons could be made wherein the wages of this category would appear more favourable. In view of the significant differences established on the figures, however, we think the Union has made out a sufficient case to establish that to some extent the wage rates are behind general trends overall and that as an additional factor in the many considerations that go into determining a wage rate, this is one that would encourage a higher rather than a lower award. In all the circumstances we think the situation is quite analagous to that which we considered in the General Operations Category and that the same rate of increase of 5% is appropriate.

With respect to the basis of application of that increase, it may be noted that this category has in the past received several straight percentage increases, and we would adopt the reasoning of the Picher board relating to the Administrative Services Category and apply the increase on the basis of a dollar and cent across the board increase calculated by applying the percentage rate of increase to the average weekly wage. Accordingly, it would be our award that for this contract year

the wage rates that were effective as of December 31, 1984 will all be increased by the weekly amount of \$22.96. It would be our intent that if by result of some other arbitration process or some other reasons the salary rates payable as of December 31, 1984 are hereafter altered, there will be a commensurate alteration in the rates for 1985 that are herein set. We will remain seized to deal with any matter relating to the implementation of this award or the determination of appropriate rates should the parties not be able to agree upon same.

2. Specific Classification Adjustments

This category is divided into several groups and includes three groups in the Trades and Crafts classification, a Marine Engineers classification and a Heating and Power Group classification. In 1983 a specific classification adjustment of \$12.00 per week was negotiated between the parties with respect to two of the Trades and Crafts classifications, all members of which were, in fact, certified Journeymen Tradesmen. It was the Union position that similar treatment should now be given to the third Trades and Crafts classification and to the Marine Engineers and to the Heating and Power Group. It was the rationale of the Union that all of the Marine Engineers and the Heating and Power Group were also certified Tradesmen, and that with respect to the third Trades and Crafts classification,

while the employees did not formally need certificates to fulfill the positions, most did, in fact, have trades certification. It was argued that there was a historic link between these various groups based on membership in recognized trades, and that this board should restore that historic link and complete the process of adjustment that commenced in 1983. It was the position of the Employer that no case had been made out justifying specific adjustments based on external comparisons, and that whatever historic relationship may have existed prior to 1983, it was negotiated away in the agreement between the parties.

With respect to the Offset Equipment Operators, it was argued that they had been transferred into this wage bargaining category in 1975, which was subsequent to negotiations in this category of some significant wage increases. Similar increases had not been achieved in their former category prior to 1975 but were achieved subsequent to 1975. Since on the move they maintained the existing salary levels, it was argued that they had been deprived of the pattern of increase in this group and that had they remained in the former group, they would have received more significant increases. It was, therefore, argued that in equity that disparity should now be made up. In addition, external comparisons to municipal employees in Toronto were provided.

The foregoing positions are not new in the arbitral context between these parties. The 1984 contract was also determined by arbitration in an award of a board chaired by E. E. Palmer, Q.C., dated December 25, 1984. In that award Professor Palmer stated that a clear case had not been made out for such special case adjustments, and they were denied. In our view, we are in the same position. We would agree that any historic relationship was, in fact, ended through the negotiation process in 1983, but that, of course, does not preclude subsequent adjustments to other classifications, either by negotiation or arbitration, in subsequent contracts. However, in support of such arguments, the onus would be on the claimant to draw proper comparisons between the qualifications, duties and responsibilities of the positions for which adjustments are claimed and similar positions elsewhere performing similar duties and responsibilities. All trade certifications are not necessarily equivalents, and while there may be some justification for restoring what was alleged to be a historic relationship, the foundation of such justification was not made in the Union materials. In our view, to establish a historic relationship the party asserting same must show not only that such a relationship may have existed in a mathematical or statistical sense, but that such relationship was the result of a conscious effort by the parties in the context of collective bargaining. Accordingly, we would make no award with respect to the specific classification adjustments requested.

3. Tool Allowance

The prior Collective Agreement between the parties specified a tool allowance of \$55.00 per year to be paid to employees in five specific classifications. The Union seeks to increase the tool allowance to \$70.00 per year and to extend its payment to any employee who has to supply tools as part of the job. No specifics were given as to which classifications would be affected, or how many employees would be involved. No information or support was provided as to the basis of the calculation of the quantum of the increase that was claimed.

We would agree in principle that an employee who is required to supply tools as part of his job duties ought to receive reasonable compensation with respect to the maintenance of those tools and an allowance for repairs and replacements. In extending that principle into the terms of a collective agreement, however, it is our view that a board of arbitration ought to be able to identify which specific employees or classifications are involved and what would be a reasonable amount of allowance to be paid to each of such employees. Surely the quantum of any arbitrated tool allowance has to bear a reasonable relationship to the value of the tools involved and

the reasonable cost of maintenance. These types of consideration would be raised at the bargaining table in the course of negotiating any such tool allowance. It is, therefore, our conclusion that an award with respect to an increase for extension of the tool allowance is not appropriate based on the information provided by the parties.

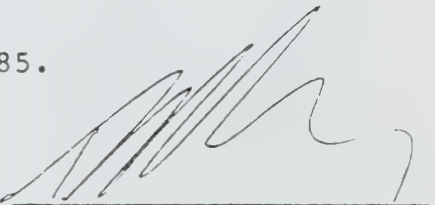
4. Time for Implementation and Provision for Interest

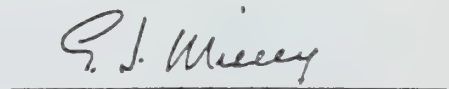
The evidence and arguments with respect to the implementation of the award and the payment of interest are adequately covered in the prior awards already referred to, and we would again adopt the reasoning of the Picher award. The wage increase awarded herein is to be implemented in a maximum of 60 days from the date hereof, and that requirement is to be a term of the Collective Agreement that will result from this award.

DATED this 10th day of October, 1985.

I concur with addendum attached

I dissent with dissent to follow



Ross L. Kennedy

George Milley

Brian Switzman

T/68/84

Crown/Ontario and the Ontario Public Service Employees Union. Addendum to MAINTENANCE SERVICES CATEGORY wage award

I have reviewed the chairman's award and while I concur, in general, with his conclusions, there are several aspects on which I wish to comment.

Of two commonly used criteria in wage determination; external rate comparisons and prevailing wage settlement trends, the latter appears to have been given little weight. The award relies almost entirely on external rate comparisons.

Private Sector settlements data published by the Ontario Department of Labour for the first quarter of 1985 averaged out at 4.1 percent. This criterion figured prominently in the awards cited by the chairman; The Administrative Services Category where the increase granted was 4.0 percent, and in The Scientific and Professional Category where the increase was 4.25 percent.

The Board correctly points out that comparisons with Ontario Hydro, Metropolitan Toronto, The Workers Compensation Board, General Motors and Stelco Inc. have undoubtedly been made with a view to the more highly paid areas of the Public and Private Sectors and that other comparisons could be made whereby the wages of The Maintenance Service Category would appear more favourable. Notwithstanding, he thinks the situation is analogous to the General Operations Category and that the Union has made out a sufficient case to merit an increase of 5.0 percent.

However, as was noted in the General Operations Category, significantly more information relating to job descriptions and job matches is necessary to assess comparative rates. The union's submission did not draw proper comparisons between the qualifications, duties and responsibilities of the positions in the Maintenance Services Category submission and the detailed information is lacking.

The Maintenance Services Category differs from the General Operations Category in a significant respect. In the latter award the board expressed the wage determination philosophy that, in equity, highly paid employees may be given lower rates of increase and those in lower wage categories be given higher rates. This appeared to be a factor in the 5.0 percent award in the General Operations Category.

As I said in my addendum to the General Operations Category award, I have some difficulty with this proposition. However, be that as it may, the Maintenance Service Category is not in a lower wage rate category as is General Operations. In fact, the average weekly rate of the former is \$459.19 per week whereas that of the latter is \$376.76 per week.

For the above reasons, I consider an award of less than 5.0 percent would have been more appropriate.

Respectfully submitted,

October 7, 1985

George Milley

George Milley

T/68/84
T/0068/84-2

IN THE MATTER OF
THE CROWN EMPLOYEES COLLECTIVE BARGAINING ACT,
R.S.O. 1980, c. 180

AND IN THE MATTER OF AN INTEREST ARBITRATION

BETWEEN THE CROWN IN RIGHT OF ONTARIO
(the "Employer")

AND THE ONTARIO PUBLIC SERVICE EMPLOYEES UNION
(the "Union")

AND IN THE MATTER OF THE MAINTENANCE SERVICES WAGE BARGAINING
CATEGORY

Board of Arbitration

Ross L. Kennedy	Chairman
George Milley	Employer Nominee
Brian Switzman	Union Nominee

APPEARANCE FOR THE EMPLOYER:

Michael Milich	Staff Relations Officer and Spokesman
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APPEARANCE FOR THE UNION:

André Bekerman	Negotiator and Spokesman
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SUPPLEMENTARY AWARD

Subsequent to the issuance of the award in this matter on October 10, 1985, the Board was advised that a problem had been encountered with respect to the implementation of the award for employees paid on an hourly basis. The award provided for an across-the-board increase on a weekly basis, and upon pro-rating that award to hourly paid employees, the resultant increase included a fraction of a cent. We direct that in such circumstances the result will be rounded up to the next whole cent, and that will be the amount of the increase for the purposes of the award.

DATED this 25th day of November, 1985.



Ross L. Kennedy

"George Milley"
George Milley

"Brian Switzman"
Brian Switzman

T/0069/84

IN THE MATTER OF AN ARBITRATION UNDER THE CROWN EMPLOYEES'
COLLECTIVE BARGAINING ACT, R.S.O. 1980, c. 108

BETWEEN: THE GOVERNMENT OF ONTARIO
("the Employer")

AND: ONTARIO PUBLIC SERVICE EMPLOYEES' UNION
("the Union")

T/69/84

AND IN THE MATTER OF THE OFFICE SERVICES WAGE BARGAINING
CATEGORY

PANEL OF
ARBITRATION: MICHEL G. PICHER, Chairperson
GEORGE MILLEY, Employer Nominee
GUY BEAULIEU, Union Nominee

APPEARANCES:

For the Employer

N. Robinson
W. Gorchinsky
E. Moolgaokar

For the Union

A. Todd
F. Lankin

A hearing in this matter was held in Toronto on June 28, 1985.

A W A R D

This is an interest arbitration respecting the wage increase for 1985 for the Office Services Category of employees of the Government of Ontario. The Union seeks a wage increase of \$35.00 per week across the board, in addition to a special wage rate adjustment of \$8.50 for typists, clerical typists, clerical stenographers and secretaries. It also seeks the extension of a wage premium for typists operating word processing equipment to all classifications of employees, with a reduction in the qualifying hours. Lastly, the Union seeks an order for the payment of interest on any delay in implementation of the wage increase resulting from this Award.

The Employer disputes the jurisdiction of the Board to award interest, and in any event maintains that an order for the payment of interest is inappropriate. It maintains that there should be no alteration of the classification note respecting the use of automated equipment, and no special wage increase for the four categories of employees proposed for such treatment by the Union. The Employer proposes a 3 percent wage increase for all employees, to be awarded on a percentage basis, and not in the form of dollars and cents across the board as suggested by the Union. By comparison, the general wage increase proposed by the Union would produce an increase of 9.4 percent on the average earnings within the category.

Office Services is one of nine categories established for the purpose of negotiating wage increases through collective bargaining for the employees of the Government of Ontario represented by the Union. The category numbers some 5,900 employees, 94.99% of whom are women. The Office Services Category is the lowest paid of the nine. The largest group of employees within the category, numbering approximately 4,500, are involved in typing, stenographic and transcription services. The two other groups in the category work in the operation of office equipment and data processing. The average annual salary for employees in the category as of December 31, 1984 was \$19,522. Salaries ranged from a minimum of \$264.09 a week, the starting rate of a Clerical Typist 1, to a maximum of \$680.10 weekly, the wage paid to a Supreme Court Reporter 1. The population of the category is weighted, however, toward the lower end of the classifications. As a result, the average weekly earnings for the category as a whole were \$374.28 in December of 1984, as compared with an average salary of \$464 weekly for employees in all nine categories.

The general jurisdiction of the Board of Arbitration is described in section 12 of the **Crown Employees' Collective Bargaining Act**, which provides, in part, as follows:

12. (1) The board shall examine into and decide on matters that are in dispute within the scope of collective bargaining under this Act.
- (2) In the conduct of proceedings before it and in rendering a decision in respect of a matter in dispute, the board shall consider any factor that to

it appears to be relevant to the matter in dispute including,

- (a) the needs of the Crown and its agencies for qualified employees;
- (b) the conditions of employment in similar occupations outside the public service, including such geographic, industrial or other variations as the board may consider relevant;
- (c) the desirability to maintain appropriate relationships in the conditions of employment as between classifications of employees; and
- (d) the need to establish terms and conditions of employment that are fair and reasonable in relation to the qualifications required, the work performed, the responsibility assumed and the nature of the services rendered.

The Union submits that the Board of Arbitration should not give undue weight to arguments respecting the Employer's ability to pay. Its spokesperson maintains that ability to pay is an elusive concept as regards a government employer, which is not, like employers in the private sector, subject to the economic forces of the marketplace. It argues that the Government budgeting process itself determines ability to pay, in a way that establishes a self-fulfilling assertion by the Employer which distorts the process of negotiation and arbitration.

The Union maintains that current economic forecasts justify a generous wage settlement in respect of the Office Services Category. It cites economic forecasts of a growth rate of 2.6% in the gross national product

and gross national expenditure, and the real growth rate of 6 percent in the gross provincial product of Ontario in 1984. The Union notes that inflation forecasts for 1985 range between 3.5 and 5 %; in its view 4.5% is a reasonable projection for inflation on average over the year.

The Union also argues increases in productivity within the Office Services Category. Taking the approach that productivity can be generally assessed on the basis of a calculation which involves dividing the population of the province by the strength of the public service, it notes a substantial decline in the number of employees in the Office Services Category, in a period when the population of the province has grown. The population of the category has declined from 7,363 in December of 1979 to 5,914 in December of 1984. These numbers reflect a reduction of some 22 percent since 1979 in the number of employees in the classifications of Data Entry Operator, Clerical Stenographer, Secretary and Typist. Calculated on a base year of 1979, the Union maintains that the ratio of population served per member of the Office Services Category has increased by 16.5% in the last year. The Union notes that in December of 1979 each employee in the Office Services Category rendered support services, on average, to 8.2 other members of the classified staff, and that by December of 1983 the average had risen to 10. It cites these figures in support of its submission that the employees in the category have been more productive, a factor which should be taken into account in the determination of their wage increase. While the Union concedes that productivity is in some measure attributable to automation and the introduction of computer technology into office systems, it argues that these

innovations nevertheless involve a degree of stress and health hazards to the employees affected.

The Union submits that the Office Services Category is particularly deserving of a significant wage increase because of two special factors. The first of these is the particular effect on the wage scale of the category of the rollback imposed by the **Inflation Restraint Act, 1982**. The second is the loss of ground in the relative wage positions of this category and other categories, most especially the Clerical Services Category, over the last few years. The Union submits that these circumstances justify special consideration for the employees of the Office Services Category in the determination of an appropriate wage increase. It maintains that the wage increase for 1985 should restore the historical relationship between this category and Clerical Services as well as reduce the differential between Office Services and all of the other categories as a whole.

Lastly, the Union submits that its position in relation to a salary increase is justified by the wage gap between women and men which is generally acknowledged to exist in the workplace. Noting that there is at present no legislation in effect in Ontario requiring equal pay for work of equal value, the Union's representative argues that wage inequities attributable to the sexual composition of the workforce can and should be corrected through arbitration.

The Union tables statistics which reflect the wage disparity between

males and females in the public service of Ontario. The following table, based on the weighted mean salary of employees in the Ontario public service as of September 30, 1984, reflects the salary differentials as between the sexes both in percentage and in absolute terms, showing the absolute number and relative percentage of employees of either sex in all nine categories:

1984 O.P.S. MALE-FEMALE MEAN SALARY DIFFERENTIALS & POPULATION DISTRIBUTIONS							
CATEGORY	* MALE POPULATION	* POP % OF CATEGORY	* MALE - MEAN SALARY	MALE/FEMALE MEAN SALARY DIFFERENTIAL	* FEMALE POPULATION	* POP % OF CATEGORY	* FEMALE MEAN SALARY
MAINTENANCE	5,602	96.65%	\$23,787	7.46%	194	3.35%	\$22,136
GENERAL OP.	2,279	58.90%	19,998	10.90%	1,590	41.10%	18,032
INSTITUTIONAL	1,945	34.97%	21,761	2.62%	3,617	65.03%	21,206
CORRECTIONS	2,673	84.38%	26,607	2.78%	495	15.62%	25,888
TECHNICAL	4,350	85.55%	26,798	9.01%	735	14.45%	24,584
CLERICAL	1,812	18.97%	21,726	6.56%	7,739	81.03%	20,389
OFFICE	310	5.14%	22,617	17.25%	5,722	94.86%	19,290
ADMINISTRATIVE	4,154	71.01%	31,929	12.61%	1,696	28.99%	28,353
SCIENTIFIC & PROFESSIONAL	1,799	41.44%	35,317	22.19%	2,542	58.56%	28,903
TOTALS	MALE POP. 24,924	MALE % 50.60%	(WEIGHTED) MALE MEAN SALARY \$26,135.23 (\$500.86/wk)	20.00%	FEMALE POP. 24,330	FEMALE % 49.40%	(WEIGHTED) FEMALE MEAN SALARY \$21,795.20 (\$417.71/wk)

* TOTAL O.P.S. POPULATION - 49,254

O.P.S. (WEIGHTED) MEAN SALARY AS OF SEPT. 30/84* = \$23,991.38 (\$459.80/wk)

* Category 8 Mean and Populations based on information provided by Ontario Government Sept. 30/84*

The Union's representative stresses that even within the Office Services Category, which contains a majority of almost 95% females, males enjoy an advantage in mean salary, reflected in a differential of 17.25%. The Union does not dispute that the salaries paid are based on the job classification, and not on the sex of the person who holds the job. It acknowledges that affirmative action is the appropriate response to correct the predominance of males in the higher paid positions. It argues, nevertheless, that the historic pattern that has concentrated women in the

lower paid classifications, and has made Office Services the lowest paid category of all nine in the public service, nevertheless merits corrective action in the determination of the appropriate wage increase for this category as a whole. In the Union's view, Office Services is a female "job ghetto" whose generally suppressed condition justifies an overall wage increase to adjust past inequities.

The Union's representative stresses that historically there has been a close relationship between the Office Services Category and Clerical Services. By way of example, the Union cites the relationship between the Clerical Stenographer II and Secretary II, positions in the Office Services Category, as compared to the position of Clerk General II in the Clerical Services Category. In the years 1962-1975, these positions were virtually at parity. With a brief interruption in the years 1976-79, parity was effectively restored from 1980 through 1983. In the contract year 1984, however, the Clerk General II position gained an absolute dollar differential of \$8.54 per week over the two positions in the Office Services Category. While in 1983 the Office Services employees had a weekly wage of \$320.31, and the Clerk General II was paid at the rate of \$320.73, in 1984 the respective rates were \$336.33 and \$344.87. The Union pleads similar discrepancies in a comparison between the positions of Clerk Stenographer III and Secretary III on the one hand and Clerk General III on the other. In that case an absolute dollar differential between the two categories which has historically been in the range of four, five or six dollars per week has increased to a differential of \$12.91 in 1984. The Union notes that the two separate categories of Office and Clerical Services were

established in 1976, having previously been united under the rubric of "General Administrative Services". Negotiations are under way at present for reuniting the two categories. The Union maintains that a wage rate adjustment of \$8.50 per week to the four classifications of Typist, Clerical Typist, Secretary and Clerical Stenographer would substantially correct the disparity in wage differentials that has occurred.

In 1982 the Union and the Employer voluntarily negotiated a two-year contract, the second year of which provided for an 11% increase. That arrangement was made only with the Office Services Category and the Clerical Services Category. In the Union's view that agreement, which involved a relatively lower increase in the first year in favour of a more generous second year increase, was calculated to reduce the wage gap between those two categories and the others. As noted above, the **Inflation Restraint Act, 1982**, struck down the wage increase which would have been paid in the second year, thereby nullifying any gain which the employees of the Office Services Category would have made in relation to other Government employees. The Union submits that this arbitration should restore to the employees what they lost in their relative wage position as a result of those events.

Based on current economic conditions, comparable rates of settlement in the public and private sector and projections respecting the cost of living, the Union seeks a general wage increase of \$35.00 per week across the board to all rates in the bargaining unit. It maintains that this proposal, which would produce an increase of 9.4% on the average earnings of this

category, would recapture the rolled-back amount, compensate reasonably for inflation and economic growth, and tend to close the wage gap between male and female employees in the Ontario public service.

The Union also asks that the Board include within its order a direction that the Employer pay interest in the event of any undue delay in the implementation of the increase in wages that results from this Award. It maintains that interest should be payable on wage increases owing to employees and unpaid within 30 days of the issuing of our Award. In this regard it cites the award issued by a board of arbitration chaired by Professor Palmer dealing with the 1984 contract for Clerical Services. In that case, interest was ordered payable at the prevailing prime rate should the increase granted not be paid within 30 days of the award. The Union maintains that the normal 60-day period of implementation is unjustifiably long, particularly in the day of the computerized payroll. It maintains that interest would act as an appropriate incentive to the Employer to speed up the internal processes over which it has control and would shorten the unduly extended implementation procedure which has become a source of frustration for its members.

Lastly, the Union requests an extension of what is referred to as the "G.I. - Salary Note" currently in effect within the collective agreement. The Salary Note is a provision whereby typists are granted a wage premium if they work in excess of 50 percent of their time on automated equipment such as word processors. In the Union's view the qualification period should be

reduced to an average of two hours per day and the premium, which involves payment of the wage rate one classification higher, should be extended to cover other classifications of employees, including secretaries and stenographers, who may have occasion to use such equipment.

The Employer differs substantially from the Union in its view of the appropriate wage increase. It submits that in recent years the Office Services Category has received wage increases comparable to or in excess of settlements for employees elsewhere in both the public and the private sectors in Canada. It notes that the 5% increase which the category was awarded in 1984 exceeded the consumer price index of 4.4% for that period, and was also in excess of the average public and private sector settlements published by both Labour Canada and the Ontario Ministry of Labour. Citing a projected growth rate of only 2.7 percent for Ontario by the Conference Board of Canada in 1985, and an expected unemployment rate of 9.1 percent for the year, the Employer submits that the Union's position is unrealistic. It also points to a Canada Labour Views report of June 17, 1985 stating that the salaries of some 48,000 clerical and technical employees of surveyed employers received general increases averaging 2.9%, excluding merit increases.

The Employer disputes the Union's assertion that the Office Services Category has fared badly in the last few years, or that there has been any substantial distortion of internal relativity as between itself and the other categories in the public service. In this regard it points to statistics indicating comparatively favourable rates of increases for the Office Services

Category in the years 1980-1984 inclusive. In the Employer's view, the fairness of the wage increases experienced by the Office Services Category is reflected in the high rate of recruitment and retention found for this group of employees. In 1984 the rate of departure from the category was 6.83 percent, with little or no indication that dissatisfaction with wages was a contributing factor. The Employer submits that that figure, coupled with further information gained from informal personnel surveys conducted among the employees leaving, demonstrates that there is no difficulty keeping employees who are at present within the ranks of the category, or replacing those who, for one reason or another, do leave their employment. It cites these facts as indications that the employees of the Office Services Category enjoy fair and satisfactory wage treatment.

The Employer urges this Board to refrain from attempting to establish a form of wage parity with the Clerical Services Category. Noting that the Board is not equipped with any detailed knowledge of the specific job classifications within the category, and is therefore not in a position to make knowledgeable comparisons, its spokesperson stresses that a negotiation along these very lines is now ongoing between the parties. She argues that their present mutual intention to combine the classifications of Offices Services and Clerical Services categories, with appropriate adjustments in job comparabilities, will produce a more informed and sensitive response to that issue.

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The Employer strenuously opposes the Union's request for an

extension of the G-1 Salary Note, which gives a wage bonus for work performed on certain computerized equipment. It notes that the same request was rejected by arbitrator H.D. Brown in stating the majority's view in the arbitration for this category in the contract year 1984. It cites that board's deferral to the negotiated job evaluation process, expressed in the following terms at p. 4:

Board rejects the Union's submission that the G-1 note referred to above, should be applied to all employees in the category.

. . . that is an area which should be demonstrated, if at all, through a job evaluation which we are advised by the Employer's brief, is taking place. It is from that position, once completed, that an objective assessment of the skills involved may be made and while there may be a basis to extend that benefit to all employees in that category, this Board is not in a position on the material before us, to make that determination, nor should it, in our opinion, make such determination without an appropriate evaluation of the value involved in the various classifications in that context.

Next, the Employer submits that it would be inappropriate, and indeed unlawful, for this Board to give effect to the Union's request for a special increase to compensate for the loss of ground caused to the wages of the Office Services Category by the **Inflation Restraint Act**. Firstly, it maintains that even taking into account the controlled wage increases mandated by the inflation restraint legislation, there has been no perceptible slippage or loss of ground in respect of the wage position of the Office Services Category relative to other categories. It also relies on the provisions of section 19 of the **Inflation Restraint Act**, which are as follows:

19. A provision of a compensation plan, to which this Part applies, entered into or established at any time, is of no force or effect to the extent that it provides for an increase in compensation rates that would bring compensation rates to a level that they would, but for this Act, have reached.

The Employer submits that the foregoing statutory provision expressly forbids the making of any arbitral award which would have the effect of reinstating inflationary increases curtailed by the legislation.

The Employer further submits that the Board is without jurisdiction to award interest in the event of any delay in the implementation of its Award. Alternatively, its spokesperson on this issue submits that the circumstances would not justify such an order, even if the Board did have the jurisdiction. The Employer tabled material outlining the process by which wage increases are implemented in the public service. These involve a substantial number of steps, both centrally within the Management Board of Cabinet and locally within each of the ministries of the Government. In these circumstances, the Employer submits that the normal implementation period of 60 days is not unreasonable, and that an order for the payment of interest after 30 days is therefore inappropriate.

The Employer's position on the wage increase is based principally on the view that arbitrated settlements for public sector employees should be chiefly guided by the pattern of settlements of freely negotiated collective agreements in the private sector. It notes that in 1984 the rates of

settlement reported for private sector agreements by the Ontario Ministry of Labour, in collective agreements covering 200 or more employees, excluding agreements in the construction industry and agreements with COLA clauses, recorded increases of 5.4%, 4.7%, 3.3% and 3.5% in each of the successive quarters of the year. It maintains that while the annual average rate of settlement for the private sector was 3.9%, the figures reveal a generally declining rate of settlement which is consistent with the projection of a number of economic forecasters in respect of the year 1985. The Employer's spokesperson on the wage issue maintains that its position is bolstered by the reported rates of inflation in the early part of 1985, coupled with general predictions for overall rates of inflation through the year. She emphasizes Statistics Canada data establishing rates of inflation of 3.7% for January, February and March of this year, and 3.9% for the months of April and May. In her view it is extremely unlikely that an overall inflation rate of 4.5% for the year, as predicted by the Union, will in fact be realized. Based on all of these considerations, the Employer's spokesperson submits that a general wage increase of 3 percent to all wage rates in the category, expressed as a percentage and not as a flat dollar and cents amount, is appropriate.

We turn to deal with the merits of the competing submissions. Firstly, this Board does not deem it necessary to respond in detail to the arguments of the parties respecting its jurisdiction to award interest, or the appropriateness of such an order. This issue was addressed in some detail in the prior award of the Board, composed of the same members, dealing with the wage increase for the Clerical Services Category, as well as the award of a

differently constituted board, under the same chairperson, which issued a decision in respect of the Administrative Services Category (award dated August 16, 1985). For the reasons elaborated in those awards, we are satisfied that we have jurisdiction to order the payment of interest that is compensatory to employees as part of their terms and conditions of employment, but that it is not appropriate in the circumstances to do so. In our view, the employees will be adequately protected from any loss of income occasioned by undue delay in implementation by an affirmative order requiring implementation within 60 days. A failure to meet that requirement, which becomes one of the terms and conditions of employment established by this Award, resulting in any substantial economic loss to the Union's members, can then be redressed through the grievance procedure.

The Board has difficulty with the interpretation of section 19 of the **Inflation Restraint Act** argued on behalf of the Employer. It appears to this Board beyond discussion that the Legislature could possibly have intended a restriction in perpetuity on increases in wages. What the **Act** mandates is a ceiling on increases during the control period and a prohibition against any attempt, **ex post facto**, to fashion a compensation plan which undoes what was accomplished by the **Act**. In our view the **Act** is not offended by post-control settlements or arbitration awards which result in increases which eventually overtake the wage levels that were rolled back. Any other interpretation would effectively impose a permanent ceiling on wages, an intention which would, in our view, require bold legislative expression. This Board shares the view expressed by Professor Weiler in the arbitration award dated June 10,

1985 resolving the wage dispute between the Union and the Ontario Council of Regents for the Colleges of Applied Arts and Technology. At p. 19 of that award Professor Weiler makes the following observation:

Counsel for the Colleges argued that this was the policy of the Legislature and must be respected by interest arbitrators. I agree with the general point: the issue, though, is what exactly was the purpose of this feature of Bill 179? Was it to impose just a temporary pause or a permanent cut in faculty salaries and college budgets? In the absence of an explicit statutory directive to the contrary, I think the former is the fairer interpretation of the legislation.

For the reasons canvassed, it appears to this Board that any attempt by a board of arbitration to deliberately negate the effect of the **Inflation Restraint Act** by awarding an increase which effectively reinstates the rolled back wage levels and compounds them forward to the present would run afoul of section 19 of the **Act**. That is not, however, what the Union seeks in the instant case. Its proposal, which would produce an overall increase of 9.4% in the average earnings of the category, is neither intended to reinstate, nor has the effect of reinstating, the 11.2% increase which was negotiated for 1983 and was curtailed by the **Inflation Restraint Act**.

This Board is not unmindful of the predominantly female composition of the Office Services Category. Nor is it unsympathetic to the concern for the Union to achieve wage equity for its female members. Similar arguments were submitted to the Board seized of the wage dispute for the Clerical Services Category, a panel with the same composition as this one. For the

reasons expressed by the majority in that award, we do not feel that this Board has any firm evidentiary basis upon which to make a responsible determination as to what amount, if any, can be included in our Award for a wage increase directed toward achieving equal pay for work of equal value. There is no evidence before us upon which we can make any judgement respecting the comparable worth of jobs performed by classifications within the Office Services Category and those to be found in other categories of the public service.

In our view it would be plainly open to the parties to negotiate issues of that kind, and where impasse is reached to submit them to a board of interest arbitration. However, should that happen, the ability of the Board to resolve such issues must obviously depend on the nature and extent of the evidence adduced before it. In this case we have virtually no evidence on which we can make an informed decision as to the form or amount of an increase that would be justified on the basis of job equity, or to which job classifications in particular such an increase should apply. Moreover, since the date of the hearing, the newly elected Government of Ontario undertook to the Provincial Assembly that legislation would be introduced before the end of this year to implement the concept of equal pay for work of equal value in the public service. For the reasons expressed in the award for the Clerical Services Category, given the imminence of that legislation, we believe it would be inappropriate for this Board to include within this Award an intuitive and unempirical response to the gender gap which, in any event, would apply piecemeal to only one category of employees. We are confident that that

important problem will be more thoroughly and responsively dealt with through the process to be established by legislation specifically addressing that issue. Should that confidence prove misplaced, it will remain open to the Union to table the issue in future negotiations.

In the Board's view the appropriate measure of the wage increase must be substantially influenced by rates of settlement in the private sector. It is those settlements, responsive as they must be to the general forces of the economy, which are the most reliable benchmark in determining the appropriate wage increase for employees in the public sector. That is particularly true where, as here, neither party has pleaded any substantial gap or inequity in the wage treatment of the employees in the Office Services Category and persons comparably employed in the private sector. Regard must also be had to wage increases elsewhere in the public sector, particularly those which are freely negotiated. The Board must also be sensitive to trends in the cost of living and, lastly, to any special circumstances that particularly affect the group of employees under consideration.

The overall rate of settlements in both the public and private sectors through 1984 was 4.6%. The reported figures reflect a continuing downward trend which has been fairly consistent since mid-1981. Over the last year settlements in the private sector averaged 3.9%, while public sector increases were in the range of 4.8%, on average. -

It is, of course, impossible to know the precise rate of inflation that

will be recorded through 1985. In our view, however, the figures available to date leave some doubt as to the projection of 4.5% favoured by the Union. Increases in the Consumer Price Index recorded by Statistics Canada for the months of 1985 surveyed, both before and since the hearing, do not support that prediction. Several economic forecasters contemplate average wage settlements in the 3 to 4% range, and lower.

In the Board's view the best estimate of rates of settlement for wages in 1985, in both the public and private sectors, is in the range of 4 percent. That projection takes into account all generally accepted indicators. That general view is confirmed in some recent settlements and arbitral awards in the public sector, including a 4% increase granted unanimously to the employees of the Administrative Services Category by a separately constituted board which included the Chairman of this Board (award dated August 16, 1985) and a further increase of 4.25% awarded in respect of the Scientific and Professional Category by a board chaired by arbitrator Teplitsky (award dated August 22, 1985). The latter award cites, in support of its determination on wages, a freely negotiated increase in wages of 4.25% between Metropolitan Toronto and its inside and outside workers represented by the Canadian Union of Public Employees.

In this case, however, particular regard must be had to the special circumstances of the employees of the Office Services Category. The material tabled discloses that they have lost measurable ground in their relative wage position, as compared with other categories of employees in the

public service of Ontario. Excluding the three highest paid categories, which are less significant for comparison purposes, between 1982 and 1984 the Office Services employees lost ground in the percentage differential between their wages and those of the employees in all of the other categories. Most significant is the gap that has arisen between Office Services and Clerical Services, the closest and most comparable category. In 1982 the Clerical Services Category enjoyed an edge in wage levels that was 4.46% higher, on average, than those in Office Services. In 1984 that difference escalated by almost 40 percent, resulting in an average wage differential of 6.19% in favour of Clerical Services. We are satisfied that this award should take into account this shift in the recent historical relationship between these two categories, and seek to restore the parties to the prior established position. However, in light of ongoing negotiations respecting the possible joining of the Office Services Category with the Clerical Services Category, with adjustments in the classifications within both categories, we do not deem it appropriate to award any change in the "G.I. Salary Note".

We do feel compelled to give weight to the events of 1982 and 1983 resulting from the imposition of the **Inflation Restraint Act, 1982**. As noted, it appears to the Board that the agreement voluntarily reached for an 11% settlement in the second year of a two-year contract, to be effective in 1983, is significant evidence of the parties' own view of the need at that time to give a special wage increase to the employees of this category. While that effort was frustrated by the legislation, the understanding then reached remains a valid indicator of the ongoing need to address a wage discrepancy that has

persisted to this time. This is precisely the kind of factor which this Board is required to consider pursuant to the terms of section 12.2(c) of the **Crown Employees' Collective Bargaining Act**.

We are also satisfied that the award of a wage increase should, in the instant case, be expressed in terms of dollars and cents to be paid across the board to each employee in the category. Percentage increases were applied to the wage increases for this category in at least the last two years. A further application of straight percentages for another year would risk extending unduly the existing wage differentials between the higher and the lower paid positions within the category. The application of a flat dollar-and-cents increase will also redress the recent loss of parity between lower paid positions in this category and certain comparable positions in the Administrative Services Category, including, for example, the Clerk Stenographer and Secretary 2, as compared to the Clerk General 2.

For the foregoing reasons the Board awards an increase of \$25 per week to the salary, as at December 31, 1984, of each employee in the Office Services Category. The increase so awarded shall be applied in two steps: firstly, on the basis of an increase of \$15 per week to the salary of each employee, effective January 1, 1985, retroactive to that date, and secondly, a further increase of \$10 weekly, effective July 1, 1985 and retroactive to that date. The Employer shall implement the foregoing increases within 60 days of the date of this Award. The increases so implemented shall represent an approximate cost to the employer of 5.3% in the year 1985. The end rate

achieved by the employees, however, will significantly restore the strength of their wage position relative to the employees of the other categories. As a result of this Award, the employees of the Office Services Category will stand in a wage differential position, on average, that is 4.29% below the employees of the Clerical Services Category. That position is squarely in keeping with their historical relationship to that group.

The Board has received and considered written submissions from counsel for the Union respecting its request to phrase our award as an increase to be applied to all "legally correct" rates, such as they may be, without specific reference to a particular existing grid of figures. The Employer, on the other hand, argues that certainty and finality demand a more specific reference identifying the wage rates in question.

No actual problems have arisen in respect of this category. In these circumstances we are satisfied that justice will be done if we follow the recent example of an award by arbitrator Palmer, dated June 29, 1985 (Clerical Services Category, 1984) and note that the increases which we award are to be applied to the rates appearing in Appendix "A" to the award of the board of arbitration chaired by Mr. Brown, establishing the wage increase for the Office Services Category for 1984, as found in Appendix I of the Employer's submissions to this Board. It is understood that should any mathematical, typographical or other errors be found to exist in the figures there found, they will be corrected forthwith, and that should the award of a board of arbitration have any effect on these figures, they will be applied as corrected, for the

purposes of this arbitration. This Board retains jurisdiction in the event of any dispute between the parties respecting this issue, or in relation to any other aspect of the interpretation or implementation of this Award.

Dated at Toronto this 4th day of October, 1985.



MICHEL G. PICHER, Chairperson

"G. MILLEY"

GEORGE MILLEY, Employer Nominee

"G. BEAULIEU"

GUY BEAULIEU, Union Nominee

IN THE MATTER OF AN ARBITRATION UNDER THE CROWN EMPLOYEES'
COLLECTIVE BARGAINING ACT, R.S.O. 1980, c. 108

BETWEEN: THE GOVERNMENT OF ONTARIO
("the Employer")

T/70/24

AND: ONTARIO PUBLIC SERVICE EMPLOYEES' UNION
("the Union")

AND IN THE MATTER OF THE CLERICAL SERVICES WAGE BARGAINING
CATEGORY

PANEL OF
ARBITRATION: MICHEL G. PICHER, Chairperson
GEORGE MILLEY, Employer Nominee
GUY BEAULIEU, Union Nominee

APPEARANCES:

For the Employer

N. Robinson
E. Moolgaokar
W. Gorchinsky

For the Union

A. Todd
F. Lankin

A hearing in this matter was held in Toronto on June 20, 1985.

A W A R D

This is an interest arbitration under the **Crown Employees Collective Bargaining Act** in relation to the dispute concerning the wage increase for the Clerical Services Category in 1985.

The Clerical Services Category includes 19 separate job classifications covering approximately 9,300 employees. This category is the third lowest paid among the nine categories of government employees represented by the Union. The average annual salary for employees in the category as of February 28, 1985 is \$20,731.00, as compared with an average of \$24,197.00 for all categories. The parties are agreed that the term of the agreement determined by this arbitration shall be for 1 year, from January 1 to December 31, 1985.

The Union seeks a general wage increase of \$30.00 per week for all employees, to be paid on a dollars and cents across the board basis. That would give an increase in the range of 10% in the lower paid categories and 5% at the higher end of the wage scale. Because the category is predominately populated by female employees the Union also requests the Board to establish a pilot project on equal pay for work of equal value modelled on federal legislation presently in effect. It also seeks an award of interest payable for any delay in the implementation of the wage increase in excess of thirty days

from the date of this award. The employer opposes the ordering of a payment in the nature of interest as well as any determination in respect of the concept of equal pay for work of equal value. It maintains that an overall wage increase of 3% added on a percentage basis to all existing wage rates, is appropriate in light of current economic circumstances.

The largest classification of employees in the category are Clerks General, who are placed in seven levels, numbering in excess of 8700 employees. In addition there are four categories of Filing Clerks, three categories of Mail Clerks as well as four other classifications, including two levels of Accounting Supervisor, Receptionst, Revenue officer and Coroner's Clerk. In a passage whose accuracy is not challenged by the employer, the Union's brief generally describes the work of the Clerical categories as "involving the receipt, sorting, recording, maintenance, retention, posting, checking, collection and evaluation of records of data related to such areas as accounts processing, mail and filing operations, examination and processing of applications, and general control and record-keeping of functions, the direct application of rules and regulations, and the dissemination of programme information and pertinent regulations."

The jurisdiction of this Board is described under section 12 of the **Crown Employees Collective Bargaining Act**, R.S.O. 1980, c. 108, which provides, in part, as follows:

12. (1) The board shall examine into and decide on matters

that are in dispute within the scope of collective bargaining under this Act.

- (2) In the conduct of proceedings before it and in rendering a decision in respect of a matter in dispute, the board shall consider any factor that to it appears to be relevant to the matter in dispute including,
 - (a) the needs of the Crown and its agencies for qualified employees;
 - (b) the conditions of employment in similar occupations outside the public service, including such geographic, industrial or other variations as the board may consider relevant;
 - (c) the desirability to maintain appropriate relationships in the conditions of employment as between classifications of employees; and
 - (d) the need to establish terms and conditions of employment that are fair and reasonable in relation to the qualifications required, the work performed, the responsibility assumed and the nature of the services rendered.

The Union's representative submits firstly that this Board should give little or no weight to any submission from the employer respecting its ability to pay. The Union argues that ability to pay is a more significant factor for an employer in the private sector whose operations are subject to market factors and the general state of the economy. In the public sector, where competition and profitability are not factors, the Union submits that the concept of ability to pay cannot be so easily applied or measured. It also argues that the denial of the right to strike, the only process by which the employer's ability to pay could in any event be put to the test, also diminishes

the significance of that factor.

The Union's spokesperson submits that ability to pay can become an unfair and distorting factor in the context of interest arbitration. The Union argues that the government's budgeting process itself determines ability to pay, a process which it maintains is at best self-serving and, more accurately, reflects an unwillingness to pay rather than an inability to pay. It submits that, on the whole, compensation in the public sector should compare fairly with compensation in the private sector, stressing that if public employees receive less than fair compensation they in effect subsidize the community by performing work for less than its true value. The Union maintains that to view ability to pay as a governing criterion would undermine the established principles and standards which have traditionally guided arbitrators in determining appropriate increases in the wages of public sector employees and, most importantly, would overshadow the criteria expressly established in section 12 of the **Crown Employees Collective Bargaining Act**. The Union asserts that for arbitrators to accept what it characterizes as a self-serving claim about the Employer's ability to pay erodes the very objectivity and independence of the arbitration process.

The first submission of the Union respecting the merits of its argument on the wage increase is that its position is justified by current forecasts for economic growth and the anticipated rise in the cost of living during 1985. It cites a composite survey conducted for the Toronto Star, published on December 29, 1984 in which some thirty established economic

forecasters predicted, on average, real growth of approximately 2.6% in the gross national product and gross national expenditure for 1985. It cites other sources which predict growth in the range of 3.3%, and inflation forecasts running from 3.5% to 5%.

The Union stresses the performance of the Ontario economy in particular, as well as productivity figures in support of its position. It notes the statement of June 10, 1985 by the then Treasurer and Minister of Economics relating that Ontario's real gross product increased by 5.2% in 1983 and 6.0% in 1984, with her prognosis that the province is "poised for a third continuous year of growth". The Union also notes the assertion in the budget of May 1984 by which the then Treasurer of Ontario reported increased productivity in government output on the basis that in 1975 there were 11 public servants for every 1,000 residents in Ontario, while in 1984 that ratio was reduced to 9 employees for every 1,000 residents. Adopting that reasoning the Union argues that the Clerical Services Category has experienced a marked increase in productivity, pointing to the fact that the number of employees in the category was reduced from 10,059 in December 1980 to 9,469 in 1983, while Ontario's population has continued to grow. In December of 1984 the category was reduced further still to 9,321 employees. The Union submits that this represents a 9.9% increase in productivity. It maintains that even if some gains in productivity may be attributable to automation and the introduction of computer technology into the office setting, the employees in the Clerical Services Category should nevertheless be rewarded for their contribution to these productivity gains.

In support of its position on salaries the Union draws to the Board's attention current statistics on wage settlement trends in Canada. Its brief contains the following table compiled by the Ministry of Labour of Ontario for wage settlements in the province expressed as an average annual percentage increase in base rates in collective agreements covering two hundred or more employees, excluding agreements with COLA clauses as well as construction industry agreements. The table contains, in part, the following:

WAGE SETTLEMENTS IN ONTARIO
AVERAGE ANNUAL PERCENT INCREASES IN BASE RATES
IN COLLECTIVE AGREEMENTS COVERING
200 OR MORE EMPLOYEES
NEGOTIATED 1980-1984, by Quarter

WITHOUT COLA CLAUSES
EXCLUDING CONSTRUCTION

		Public	Private	All Agreements
1980	1st Q.	9.1%	(10.9%)	9.3%
	2nd Q.	9.8	10.7	10.0
	3rd Q.	11.1	11.7	11.3
	4th Q.	10.8	11.1	10.9
	Annual	10.0	11.2	10.3
1981	1st Q.	12.5	12.2	12.4
	2nd Q.	13.0	11.4	12.8
	3rd Q.	13.6	12.5	13.5
	4th Q.	13.9	11.0	13.4
	Annual	13.2	11.7	12.9
1982	1st Q.	12.2	11.5	12.1
	2nd Q.	12.7	10.6	12.1
	3rd Q.	10.8	10.2	10.6
	4th Q.	6.0	9.4	6.8
	Annual	9.6	10.1	9.7
1983	1st Q.	6.6	7.5	6.8
	2nd Q.	5.9	7.2	6.1

	3rd Q.	5.1	6.5	5.3
	4th Q.	5.0	5.1	5.3
	Annual	6.1	6.9	6.3
1984	1st Q.	4.5	5.4	5.0
	2nd Q.	4.9	4.7	4.8
	3rd Q.	5.0	3.3	4.4
	4th Q.	4.2	3.5	4.5
	Annual	4.8	3.9	4.6

The Union submits that the foregoing figures demonstrate something of an upturn in public sector wage settlements from a low reached in the first quarter of 1984. Based on the preliminary figures for the fourth quarter, the figures for all agreements would also show something of an upturn from the low reached in the third quarter of 1984. The Union argues that the upward trend has been sustained in recent public sector settlements. In this regard it cites a number of settlements in the fields of utilities, municipal employment, education and nursing ranging between 4.25% and 5%. Additionally, at the hearing, it brought to the Board's attention the more recent negotiated settlement of an annual wage increase of some 7.2% for officers of the Ontario Provincial Police.

Lastly, the Union pleads two special circumstances which it maintains justify special consideration for the employees of the Clerical Category. The first of these is a statutory roll-back of the two-year agreement voluntarily negotiated for the years 1982 and 1983. That agreement provided for increases averaging 12.5% in the first year and 11% in the second year. The Union saw the two-year arrangement as a means of redressing the imbalance between the employees in the Clerical Services

Category and those in the higher paid categories. The increases in the first year were lower than those obtained by four other categories, on the Union's understanding that the loss of ground would be compensated for in the second year. However, legislation in the form of Bill 179, **The Inflation Restraint Act**, 1982, intervened to effectively nullify the second year agreement. Instead of a total increase of 11% as anticipated, the employees were rolled back to an amount equal to 5% of the pay scales scheduled to go into effect on July 1, 1983. The Union submits that now, with the removal of the statutory controls, the increases which were freely negotiated between the parties should be restored. It submits that a general increase of 5.3% of the 1983 rates, converted to a flat dollar rate of \$23.00 per week, would make up some of the loss occasioned by the intervening legislation. It stresses that that figure would not truly put them in the same position because it does not take into account the loss of the use of the rolled-back money over time nor the further amount which they would have had by the compounding of the 1984 increases.

The second special circumstance pleaded by the Union is the largely female composition of the Clerical Services Category. The Union cites the widely recognized wage gap between working women and men in contemporary society. It submits that the wage treatment of the Clerical Services Category, which is 81% female, is no exception to that general reality. In support of its position the Union cites the following table comparing male-female mean salary differentials and population distributions in the nine categories represented by the Union:

1984 O.P.S. MALE-FEMALE MEAN SALARY DIFFERENTIALS & POPULATION DISTRIBUTIONS

CATEGORY	* MALE POPULATION	* POP % OF CATEGORY	* MALE - MEAN SALARY	MALE/FEMALE MEAN SALARY DIFFERENTIAL	* FEMALE POPULATION	* POP % OF CATEGORY	* FEMALE - MEAN SALARY
MAINTENANCE	5,602	96.65%	\$23,787	7.46%	194	3.35%	\$22,136
GENERAL OP.	2,279	58.90%	19,998	10.90%	1,590	41.10%	18,032
INSTITUTIONAL	1,945	34.97%	21,761	2.62%	3,617	65.03%	21,206
CORRECTIONS	2,673	84.38%	26,607	2.78%	495	15.62%	25,888
TECHNICAL	4,350	85.55%	26,798	9.01%	735	14.45%	24,584
CLERICAL	1,812	18.97%	21,726	6.56%	7,739	81.03%	20,389
OFFICE	310	5.14%	22,617	17.25%	5,722	94.86%	19,290
ADMINISTRATIVE	4,154	71.01%	31,929	12.61%	1,496	28.99%	28,353
SCIENTIFIC & PROFESSIONAL	1,799	41.44%	35,317	22.19%	2,542	58.56%	28,903
TOTALS	MALE POP. 24,924	MALE % 50.60%	(WEIGHTED) MALE MEAN SALARY \$26,135.23 (\$500.88/wk)	20.00%	FEMALE POP. 24,330	FEMALE % 49.40%	(WEIGHTED) FEMALE - MEAN SALARY \$21,795.20 (\$417.71/wk)

* TOTAL O.P.S. POPULATION = 49,254

O.P.S. (WEIGHTED) MEAN SALARY AS OF SEPT. 30/84* = \$23,991.38 (\$459.80/wk)

* Category % Mean and Populations based on Information provided by Ontario Government Sept. 30/84*

The foregoing figures show that even though females predominate, within the Clerical Category there is a mean salary differential of 6.56% favouring males, based on the 1984 wage data. While this is not as dramatic as the 20% salary differential favouring males reflected in the nine categories of the public service overall, in the Union's submission it nevertheless discloses a disturbing inequality in the wages paid to females. Noting that there is at present no legislative mechanism for adjusting wages on the basis of equal pay for work of equal value, the Union submits that this Board should establish by its order a contractual mechanism in the nature of a pilot project, based on the general principles of equal pay legislation now in effect for employees governed by the **Canada Labour Code**.

The Union submits that Clerical Services and Office Services, the two categories which are predominantly female, are two of the three lowest paid of the nine categories. It notes that even in both of these categories the men,

who are in the minority, nevertheless receive higher wages on average than do women. This reflects a greater upward job mobility for males than for females. The Union notes that within the Clerical Services Category 51% of the Clerk 7's and 40% of the Clerk 6's, the higher rated employees, are men as compared to 10% of Clerk 2's and 12% of Clerk 3's, who are lower paid.

The Union notes that these figures are in general keeping with the overall pattern in the public service of Ontario. It cites the report of the Women Crown Employees' Office for 1984 showing that in the entire classified public service of 68,000 employees, as of March 1984, women comprised 82% of all employees in salary ranges below \$17,000 per year, while they accounted for only 16% of all employees in ranges of over \$32,000 a year. The Union notes that 79% of all women in the Ontario public service earn below \$25,000 while only 39% of male employees fall below that line.

The Union's spokesperson submits that the foregoing figures reveal the consequences of an outmoded view of the role and status of women in the workplace. While acknowledging that affirmative action programs have an important role to play in redressing the imbalance, the Union argues that there is an additional need for redress in the form of equal pay for work of equal value, and that such redress can be achieved through the arbitration process. The Union draws to the Board's attention two prior interest arbitrations, one by arbitrator D. Pyle in an award issued in February of 1984 respecting the clerical bargaining unit at Peterborough Civic Hospital, and another by arbitrator E. Palmer in the award for the wage increase for the Clerical

Category that is the subject of this arbitration, in December of 1984. In both of those awards the arbitrators cited the wage gap between males and females in awarding increases.

For these reasons the Union submits that a general wage increase of \$30.00 per week for all employees in the Clerical Services Category is justified. It prefers the increase to be paid in the form of an equal dollar amount to all employees as a further means of redressing what it views as the inequitable position of the lower paid classifications within the category. In this regard it refers the Board to the reasoning of arbitrator Palmer in last year's award which adopted a dollars and cents across the board approach.

The Union also cites Professor Palmer's award in support of its request for an order requiring the payment of interest attributable to any delay in the implementation of this award beyond 30 days from its release. The Union asserts that the 60-day period which is normally required for the implementation of wage increases is unduly long. Its representative argues that the time which is taken to implement the wage increase is time during which the employees do not have the use of the monies awarded to them. He submits that interest is an appropriate method of compensating the employees for the loss of the use of their increased wages beyond a reasonable limit of 30 days for implementation.

The Employer differs substantially from the Union in its perception of the state of the economy, including projections for its immediate future as well

as with respect to the particular circumstances of the employees in the Clerical Services Category. In the Employer's view the state of the economy is most accurately reflected, for the purposes of collective bargaining, by settlements in the private sector. It is these settlements, influenced as they are by the economic forces of the marketplace, which the Employer views as the more reliable reflection of economic trends. Its spokesperson notes that the increases received by the Clerical Services Category over the last several years have exceeded increases in both the private and the public sectors in Ontario as well as in Canada generally. The category has enjoyed an overall base rate increase of 53.5% between 1981 and 1984, as compared with a 37.7% increase in the consumer price index and compounded average wage increases of 38.1% and 36.6% in the public and private sectors respectively in Ontario over the same period, taking into account collective agreements excluding the construction sector and without cost of living allowances.

The Employer is less optimistic than the Union in its view of the economic future. It cites the prediction of the Conference Board of Canada made in February of 1985 of a growth rate of only 2.7% for Ontario as well as the Canada Labour Views report of January 14, 1985 predicting slow economic growth and restrained wage increases in the 3% to 4% range. From a historical perspective, the Employer's brief notes that in 1984 the Clerical Services Category received an increase of 6.5%, thereby being awarded more than all of the other categories save one. It submits that because that increase was in response to the arbitration board's view of the special circumstances of this category, there are no comparable special circumstances

which warrant extraordinary increases for the Clerical Services Category in 1985. In the Employer's submission the wage levels of the employees in the category compare favourably with others within the public service as well as in other sectors of employment. It submits that comparable wage settlements in the private sector through 1984, which averaged 3.9% over the year, are the best indication of the rate of increase that should be awarded to the Clerical Services Category.

The Employer submits that this Board has no jurisdiction to make any determination with respect to the concept of equal pay for work of equal value, and to address relativities among jobs in the different bargaining categories. In this regard, it cites the approach taken by arbitrator H.D. Brown in the award for the Office Services Category issued in December of 1984:

. . . it is our opinion that the reference and indication of inequality of earnings between men and women in the public sector is beyond this Board's determination in this dispute, that submission may well be part of an evaluation of these jobs in relation to others in the public service however it is not sufficient for our purposes to make a claim in that respect based on averages which may indeed by themselves be correct, without an objective study of comparative information no arbitration board could make an informed judgement of the effect of such a factor on the wage scales of a certain group of employees who form about 11% of the total service-wide bargaining unit without such in depth statistics and job data.

The Employer submits that the concept of equal value should not be addressed within the context of this arbitration. At the time of the hearing

all three major political parties in Ontario had endorsed the concept of "equal pay" legislation, although no specific proposal had yet been tabled. The Employer submits that any attack on the problem of comparative worth will require a great deal of work to establish the correct basis for comparisons between unrelated jobs within the particular context of the public service. It submits that an arbitral award respecting "equal pay" without the benefit of an in-depth study of the complexities of the problem will not assist the parties in the search for a system that will establish and maintain meaningful job equity.

The Employer notes that there is currently under way a set of negotiations between the Union and itself with a view to devising a job evaluation plan for both the Office Services and the Clerical Services categories. That negotiation is undertaken with a view to forming a common Office Administration Group, with special regard being had to equal value in the classification of employees within the two categories. It submits that this Board should let that process unfold, and should not, absent any substantial information regarding the job content of the 745 classes of employees spread through the nine bargaining categories, take upon itself the responsibility of fashioning an "equal pay" requirement for the public service of Ontario.

The Employer further submits that the Board is similarly without jurisdiction to make an award for the payment of interest relating to the implementation of any wage increase, and that if such a jurisdiction does exist

an award of that kind is inappropriate. It argues that if employees in the public sector experience a delay in the receipt of their annual wage increases, that delay is attributable at least in part to the collective bargaining process. To the extent that negotiations are conducted between both of the Employer and the Union, the latter shares in the responsibility for part of the delay in the process. When the timing of wage increases is further extended by the arbitration process it is, the Employer submits, inappropriate to attribute the delay entirely to one party.

The Employer's representative explained the process of implementation of a wage increase resulting from the decision of a board of arbitration. By her account, based on the documented performance of the implementation of past awards in all nine categories, a wage increase can normally be put into effect within 60 days of the award. In the Employer's view, that is not an undue delay in the circumstances. Its representative also argues that interest should not be awarded in any event because it is normally reserved for instances of culpable behaviour. Finally, the Employer maintains that there can, in any event, be no recovery of interest against the Crown without clear legislative authority, which does not exist in this case.

In summary, the Employer maintains that an overall increase of 3% to all wages in the category is appropriate. It submits that an award granting an increase at that level is justified by the rate of settlements in the private sector in Ontario. In the Employer's view a 3% increase will maintain internal relativities in respect of other categories of employees within the

public service and will equitably compensate a classification of employees whose fair treatment has in the past been marked by a stable rate of employee retention coupled with little or no difficulty in employee recruitment.

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The Board turns to consider the merits of the positions advanced by the parties. In our view the position of the Employer with respect to the importance of settlements freely negotiated in the private sector is compelling. Government does not function in an economic vacuum, insulated from the economic realities of the day. The factors that make up those realities, including inflation, interest rates, supply and demand for goods and services in both national and international markets, employment rates and demographics, to name but a few, all have a direct impact on the negotiation of collective agreements in the private sector. It is those settlements, therefore, which can be looked to most reliably in determining the level of wage increases appropriate in the public sector. In the case at hand neither party suggested that there is at present any substantial inequity between the wage rates of the Clerical Services Category and the rates paid for comparable jobs in the private sector. In these circumstances the value of following the trends of settlement in the private sector is to that extent enhanced. Settlements in the public sector must also be given close consideration, particularly where they are freely negotiated and reflect parallel employment circumstances. In addition to the general trends in both the private and public sectors, a board of arbitration must consider any special circumstances of the category of employees in question.

The Union forcefully pleads the sexual composition of the Clerical Services Category. It asserts that the jobs in this category, which is among the three lowest paid in the entire public service, have traditionally been under-valued because they have been predominantly filled by females. Few would dispute that wage disparity between males and females in the contemporary workplace is an issue that merits close attention. Indeed, the Employer did not assert that there is no need to address the issue of equal pay for work of equal value within the public service of Ontario. The need for a mechanism to identify and redress inequities as between male and female employees in the public sector is not, therefore, in dispute. The issue is whether a board of interest arbitration is an appropriate forum, and whether this Board in particular is properly situated, to make an affirmative order aimed at correcting any gender gap in Ontario's public service.

The statistics tabled by the Union make a compelling case for a detailed examination of the comparative worth of jobs performed by women in the public service. The rather startling consistency with which men have apparently risen to the top in virtually all of the nine employment categories, including those which are predominantly female, does not square with generally accepted views of the relative equality in skills and abilities among men and women.

The case for a close examination of this issue appears overwhelming. Nor can we accept the position suggested by the Employer that a board of interest arbitration can in no circumstances be an appropriate body to deal

with bargaining issues touching on the issue of systemic wage discrimination on the basis of sex. There is nothing in principle to prevent a union in the private sector, which enjoys the right to strike, from bargaining remedial wage settlements for classifications of employees whom it believes have historically suffered wage discrimination on the basis of their sex. Subject to the requirements of employment standards legislation that any settlement be framed in terms of compensation for all employees in a given classification, whatever their sex, there is ample scope for collective bargaining to be the vehicle for redressing wage inequity based on sex. In the private sector, nothing would prevent a union and an employer from negotiating a scheme, however simple or elaborate, for comparing the relative worth of various job classifications, adjusting wages accordingly and submitting particular disagreements to third party adjudication for final and binding determination. We know of nothing in law or in principle to suggest that government employees who have a right to bargain collectively should be more restricted in their ability to address these issues. The correction of wage distortions based on the historic treatment of classifications of employees due to their sex is a matter that can be freely negotiated in any workplace as part of the terms and conditions of employment. To that extent it must surely fall within the scope of collective bargaining, both at the level of negotiation and arbitration, as contemplated in sections 1(d) and 10 of the **Crown Employees' Collective Bargaining Act**.

While we are is satisfied that this Board has jurisdiction to make a determination in the dispute between the parties on the issue of equal pay for

work of equal value, we share in large measure the view of the Employer with respect to the appropriateness of any affirmative order in the context of this arbitration. We come to that conclusion for a number of reasons. The Union's demand on this issue is articulated on two levels. Firstly, it asks this Board to grant a higher wage increase to the Clerical Services Category strictly because it is predominantly female. The argument is that traditionally women have been underpaid, the great majority of the employees in this category are women, and therefore something extra in the way of a wage increase should be given to this category of employees. There is no evidence adduced with respect to the content of any particular job or classification within the category or in any other category. While the argument is made in terms of comparable worth, there is no evidence adduced that could form the basis of any rational comparisons as to the content of specific jobs or their value to the Employer.

By this argument the Union asks the Board to accept in the most intuitive and unempirical way that systemic wage discrimination has affected the predominantly female Clerical Services Category. For the sake of clarity, it should be emphasized that the Union does not assert that the table of data reproduced above provides any detailed insight into specific issues of comparable worth. Those figures obviously raise serious questions about the need for affirmative action in the awarding of promotions in the public service. To the extent that females seem to dominate the lowest paid categories the data may also be taken as at least raising *prima facie* questions as to the

relative rates of remuneration from one category to another. As intriguing, and at times disturbing, as these data may be, they cannot, in our respectful view, be fairly characterized as other than raising, rather than answering, important evidential questions.

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As sympathetic as the Board may be to the impulse which motivates the Union's position, we must conclude that the material before us is simply inadequate for the responsible determination firstly, of whether a gender gap exists in the wage structure controlling the Clerical Services Category and, if such a gap does exist, what measure of wage increase would be appropriate to redress it. Nor do we consider that an impossible task. Labour tribunals have substantial experience in hearing and weighing evidence respecting the details of jobs and job classifications. That is precisely what labour boards are often required to do in resolving disputes between parties respecting the composition of a bargaining unit, usually in light of general principles governing community of interest and managerial exclusions. Depending on the nature of the dispute, those issues are sometimes resolved by hearing evidence on a job-by-job basis, or through the evidence of a representative employee or group of employees. There are also numbers of grievances in which boards of arbitration deal in substantial detail with the content of various jobs, as for example in disputes concerning job classifications. Absent any other mechanism, we see no jurisdictional impediment to a board of interest arbitration dealing with similar issues concerning disputes over equal pay for work of equal value. On the basis of the material presented by the Union, however, no such determination can be made in this case.

The second position articulated by the Union is a request for this Board to establish a procedure for the resolution of equal pay disputes. The Union does not table any specific procedure of its own, save to suggest that we might fashion a system comparable to that in effect under the **Canadian Human Rights Act**, S.C. 1976-77, c.33. For the reasons already expressed, this Board sees no jurisdictional obstacle to making an order to resolve any dispute which has been substantially addressed without resolution in bargaining, particularly if no other remedial mechanism seems available. In the circumstances of this case, however, there is significant reason to decline the Union's request, at least for the time being. At the time of the hearing a new government was being formed. Since then, the new Government has stated to the Legislature that "equal pay" legislation governing employees in the public sector in Ontario would be introduced before the end of this year. In light of that undertaking, it appears to this Board that it would be inappropriate and counter-productive for a board of arbitration to fashion and order into force a scheme for the negotiation and adjudication of equal pay disputes.

We come to that conclusion for a number of reasons. A "pilot project" of the kind the Union suggests would be extremely limited in value. Firstly, as the product of the specific adjudication of the wage dispute of one category of employees it would have a piecemeal impact, at best. There are other equally compelling reasons of sound legal process to defer to the stated intention of the Government to introduce equal pay legislation. The concept of equal pay for work of equal value has policy dimensions of substantial

significance. The executive and legislative branches of government are better placed than adjudicative tribunals to respond to broad policy concerns of this kind. Legislators have the ability to consult both formally and informally with the interested parties, to canvass competing legislative schemes, and to examine such experience as may be found in other jurisdictions. The legislative process allows a range of input, both public and private, that is not available to a board of interest arbitration. Also, and perhaps most importantly, while it may be open to a board of arbitration to fashion procedures to resolve equal pay disputes, a scheme for implementing the principles of equal pay for work of equal value will command an enhanced measure of public respect and acceptability if it is fashioned legislatively by a government having the support of a majority of the electors. Needless to say, if ultimately the legislative branch proves unresponsive, it remains open to the Union to raise again the issue of equal pay at the bargaining table and, in the event of impasse, before a board of interest arbitration.

We turn to the issue of interest. For reasons already expressed in the award of the majority of a differently constituted board dealing with the wage dispute of the Administrative Services Category (award dated August 16, 1984) we are satisfied that it is within our jurisdiction to make an order for interest, provided that such an order would be compensatory and not punitive. For the reasons canvassed in the prior award, however, we are also of the view that it is not appropriate in the circumstances of this case to make such an order. The evidence establishes that the current implementation procedure requires approximately 60 days. The evidence before the Board does not

allow a critical evaluation of that time lapse or the process which gives rise to it. It is, moreover, the Board's understanding that every reasonable effort is being made by the Employer to reduce the implementation period insofar as it is possible to do so. In these circumstances it appears to the Board that the Union and its members are adequately protected by an affirmative order of this Board for the implementation of the wage increase within 60 days of its Award. Any failure to meet that requirement will be a violation of the terms of this Award and, by extension, of the collective agreement. Should any delay be substantial, the Union will be in a position to file a grievance for the appropriate compensation of its members.

We turn to consider the issue of the wage increase. In our view, in light of the trend of wage settlements in both the public and private sector during the last year, a general increase in the range of 4% would be justified, without regard to special considerations. Our determination is based substantially on the rates of settlement in the private sector through 1984. Based on the preliminary figures of the Ministry of Labour for the fourth quarter of 1984, the overall rate of settlements in collective agreements covering two or more employees, excluding the construction sector and agreements with COLA clauses, was 3.9% over the year. The year saw a general decline from a rate of 5.4% to 3.5% in the fourth quarter for the private sector. During the same period settlements in the public sector were not appreciably higher. Taking that general view, the Board also takes into account current rates of inflation and forecasts for the performance of the consumer price index through 1985. Through the first three months of the

year the consumer price index in Canada increased by 3.7%, rising only slightly to 3.9% in the fourth month. While inflation may yet increase, it appears doubtful to the Board that the later months of the year will achieve rates of inflation sufficiently high to produce an overall average of 4.5%, as predicted by the Union. We are fortified in that view by rates of inflation which have been reported since the hearing, the most recent of which was 3.8% for the month of July.

There is, however, a special circumstance touching the employees of the Clerical Services Category which the Board considers significant in determining their appropriate wage increase. In 1982 the Union and the Employer voluntarily concluded a two-year agreement allowing for an 11% increase in the second year. This was done only for the employees in the Clerical Services Category and the employees in the Office Services Category. The Board accepts the Union's view that the settlement so fashioned was aimed at correcting the wage gap between the employees of these two categories and those in the seven other categories of the public service. We view that settlement as evidence of an agreement between the parties reflecting the need to give special consideration to raising the wage levels of the employees in both of these categories. The effect of that settlement was, however, undone by the **Inflation Restraint Act, 1982**.

The Union submits that this Board should, in part, restore what was undone by that legislation. The Employer, on the other hand, asserts that it would be improper for this Board to attempt to undo the effect of the Inflation

Restraint Act, 1982. It refers the Board to section 19 of the **Act** which provides:

19. A provision of a compensation plan, to which this Part applies, entered into or established at any time, is of no force or effect to the extent that it provides for an increase in compensation rates that would bring compensation rates to a level that they would, but for this Act, have reached.

The Employer argues that it is not open to a board of arbitration to return a group of employees **ex post facto** to the wage position which they would have enjoyed but for the effect of the **Inflation Restraint Act**. With that position we do not disagree. We cannot, however, accept the characterization by the Employer of the Union's position. From a mathematical point of view, awarding the increase which the Union seeks would plainly not return the employees to that level of compensation which they would, but for the **Inflation Restraint Act**, have enjoyed.

We view the events of 1982, and in particular the two-year settlement achieved voluntarily by the parties, as a significant piece of evidence to which we can look to assess the appropriate position of the employees in the Clerical Services Category, vis-a-vis the other categories, for the purposes of a wage increase in 1985. In our view, the fact that the parties freely concluded a two-year agreement, the terms of which would have in all likelihood reduced the gap between the Clerical Services Category and others, is a telling event. We are satisfied that it is evidence confirming the justification for an increase for the clerical employees somewhat in excess of

the increase that would otherwise be justified on the basis of comparable settlements, inflation and other economic factors.

However, we must also bear in mind the events of 1984. Through the arbitration award of the board chaired by Mr. Palmer, the employees of the Clerical Category gained a wage increase of 6.5%. By comparison, the employees of the Office Services Category, the most directly comparable group, received only a 5% increase. In 1984, only the Correctional Services Category received a greater increase than Clerical Services, for reasons particular to the circumstances of that category. In the result, the percentage wage differential between the Clerical Services and other wage categories made perceptible improvement in 1984. Taking into consideration the events of 1982, however, it would appear to this Board that there is still room for some positive adjustment.

For the foregoing reasons, the Board determines that a wage increase of 4.78% applied to the wage rate of all employees in the category effective December 31, 1984, is appropriate. Bearing in mind that an across-the-board increase expressed in terms of dollars and cents was awarded in this category last year, in the interest of avoiding undue wage compression the Board deems it appropriate to accede to the Employer's request for an award on the basis of a percentage increase, rather than a flat rate increase as requested by the Union.

For the sake of clarity, the Board defers to the concerns of the Union

respecting a dispute between the parties as to the appropriate rate of remuneration for the classification of Clerk 6, General in the year 1984. The resolution of that issue was pending at the time of the instant hearing. The Board therefore declares, for the purposes of clarity, that the percentage increase being awarded should be calculated on the current and legally correct salary schedule, range and rates, including all adjustments arrived at by negotiations, arbitration awards or other agreements between the parties that may have been made prior to or during negotiations and until the implementation of the Award in relation to the classification of Clerk 6, General. Subject to that clarification, the Board orders the payment of a wage increase of 4.78% to all wage rates in the Clerical Services Category in effect as of December 31, 1984, retroactive to January 1, 1985. The wage increase so ordered shall be implemented no later than 60 days from the date of this Award.

The Board remains seized of this matter in the event of any dispute between the parties respecting the interpretation or implementation of this Award.

Dated at Toronto this 4th day of October, 1985.



MICHEL G. PICHER, Chairperson

"G. MILLEY"

GEORGE MILLEY, Employer Nominee

DISSENT TO FOLLOW

GUY BEAULIEU, Union Nominee

B E T W E E N :

THE ONTARIO PUBLIC SERVICE EMPLOYEES
UNION

- and -

THE CROWN IN RIGHT OF ONTARIO
(SCIENTIFIC AND PROFESSIONAL CATEGORY)

File No. T/72/84

BOARD:

Martin Teplitsky, Q.C.

G. J. Milley

M. Vorster

APPEARANCES:

On behalf of the Union: Chris Schenk

On behalf of the Employer: W. J. Gorchinsky, Elsie Moolgaoker,
Miriam Irwin, Alan Levy, Rob Scouller
Daniel Rinck, Anthony David

Hearing held August 22, 1985 in Toronto.

At the conclusion of the hearing, the Board orally delivered its award of a general increase of 4.25 per cent. Both Mr. Milley and Mr. Vorster dissented. We adjourned sine die the claims for a special adjustment

for six groups to permit the filing of further material and to permit the parties to conclude their agreement in principle with respect to nurses.

The general positions of the parties which appear to be the same in all nine arbitrations are fully and fairly set forth in the Award of Arbitrator Picher, dated August 16, 1985, pages 1-11 involving The Administrative Services Wage Bargaining Category and need not be repeated here. That Board awarded a 4 per cent overall increase which, at the Union's request, was converted into a flat dollar increase for all employees. No similar demand is made in this case. Arbitrator Picher based his award on private sector settlements in 1984 which averaged 3.9 per cent and the current level of the Consumer Price Index.

Because the year 1985 is two thirds concluded, I prefer to base my determination on increases freely bargained in the private and public sector in the same year in which I am arbitrating. The available data shows average increases in the public sector of 4.1 per cent and average increases in the public sector of 4.6 per cent. There is no breakdown in the public sector data between settlements made where the right to strike exists and where there is compulsory binding arbitration. However, included in the public sector data is a freely negotiated settlement between C.U.P.E. and Metropolitan Toronto for its inside and outside workers of 4.25 per cent. These employees have the right to strike.

I consider this settlement appropriate in deciding where within the range of 4.1 and 4.6 per cent a determination should be made. For these reasons I awarded a general increase of 4.25 per cent.

There are two matters which require brief mention. The Union argued that all employees in this category should receive a higher award because employees in six groups are underpaid. I reject this argument. It is not supported either by logic or equity. If discrete groups, for example, the nurses, are underpaid, their wages should be adjusted. It is wrong to adjust the wages of other employees who are not underpaid because nurses are underpaid.

In addressing the claims for special adjustments in the six groups, Mr. Gorchinsky accepted the need for a special adjustment for nurses because of the employer's difficulty in retaining and recruiting qualified nurses. This consideration is based both on commonsense and on Sec. 12(2)(a) of The Crown Employees Collective Bargaining Act, R.S.O. 1980, Chapter 108. Sec. 12 provides:

12.—(1) The board shall examine into and decide on matters that are in dispute within the scope of collective bargaining under this Act. 1972, c. 67, s. 11 (1).

(2) In the conduct of proceedings before it and in rendering a decision in respect of a matter in dispute, the board shall consider any factor that to it appears to be relevant to the matter in dispute including,

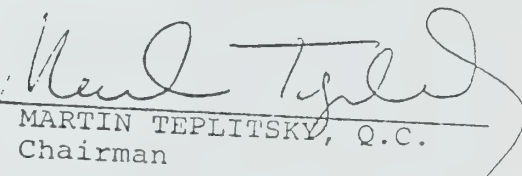
- (a) the needs of the Crown and its agencies for qualified employees;
- (b) the conditions of employment in similar occupations outside the public service, including such geographic, industrial or other variations as the board may consider relevant;

- (c) the desirability to maintain appropriate relationship in the conditions of employment as between classifications of employees; and
 - (d) the need to establish terms and conditions of employment that are fair and reasonable in relation to the qualifications required, the work performed, the responsibility assumed and the nature of the services rendered. 1972, c. 67, s. 11 (2); 1974, c. 135, s. 7.
- (3) The board may, upon application by either party to a decision within ten days after the release of the decision subject to affording the parties the opportunity to make representations thereupon to the board, amend, alter or vary the decision where it is shown to the satisfaction of the board that it has failed to deal with any matter in dispute referred to it or that an error is apparent on the face of the decision.
- (4) The *Arbitrations Act* and the *Statutory Powers Procedure Act* do not apply to arbitrations under this Act. 1972, c. 67, s. 11 (3, 4).

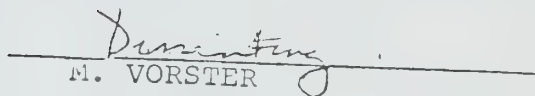
Implicit in Mr. Gorchinsky's argument is the notion that unless the Crown has a problem in securing employees, no special adjustments are warranted. In my respectful opinion, Mr. Gorchinsky's argument ignores the criteria set forth particularly in Sec. 12(2)(b) and 12(2)(d). I agree with him that the Government need not be the highest paying employer. It must, however, be a fair employer. If a salary is not within the range of reasonable for salaries paid to other persons in the private and public sector for similar work, in similar conditions, with similar qualifications, an adjustment is warranted, whether or not the employer is experiencing difficulty in retaining or securing qualified employees. This latter factor is relevant in deciding where within the range of reasonable the wages of particular employees should be set. This consideration, however, does not justify an unreasonably low wage.

The Board will continue to remain seized.

DATED the 22nd day of August, 1985.


MARTIN TEPLITSKY, Q.C.
Chairman


G. J. MILLEY


M. VORSTER

In the matter of an arbitration under the Crown Employees'
Collective Bargaining Act

BETWEEN: The Ontario Public Service Employees Union

-and-

The Crown in right of Ontario

(Scientific and Professional Category)

Dissent of George Milley

I have read the Chairman's award in the above matter and, with respect, I must dissent on two issues.

First, in my view, Public Sector wage settlements ought to be based on settlements in the Private Sector; not on settlements in both the public and private sectors.

Second, a single wage settlement, in either the public or private sector is an unreliable yardstick for wage determination.

The acceptance of the private sector settlements as a barometer for wage determination in the public sector is now well established. The private sector is constrained by market forces and the resultant wage settlements are a reflection of the state of the economy in the Collective Bargaining context.

To quote chairman Paul Weiler in Re: 65 Participating Hospitals and CUPE, 1981, page 6:

"Still I do believe that private sector negotiations should play the dominant role in wage determination, at least as far as interest arbitrators are concerned. If the results of free collective bargaining are to be the norm, we should look to the compensation bargains which are struck by unions and employers who are directly exposed to the forces in the market economy, in whichever direction this standard may take us."

Also, to quote Mr. H.D. Brown in Re: Institutional Care Category, and OPSEU, 1984, page 11:

" On the other hand, as recognized by the Union in its brief, the object of interest arbitration is to approximate as reasonably as possible, the outcome which would be reached through free collective bargaining and in that regard comparisons to the private sector were appropriate to indicate the community rates it stated: 'In the Union's review, general trends in private sector collective bargaining are the most meaningful external benchmark, because they are market determined and applied to a large proportion of the labour force. It is the Union's view that the only appropriate

comparison for Ontario Public Service Employees is the private sector in Ontario, because of the province's unique set of economic conditions.'"

On page 2, the chairman refers to average increases in the public (sic) sector of 4.1 percent and average increases in the public sector of 4.6 percent in 1985. He correctly points out that there is no breakdown in the public sector data between settlements made where the right to strike exists and where there is compulsory binding arbitration.

However, with respect, the analogy that a "right to strike" settlement in the public sector is equally as reliable for wage determination as one in the private sector is not very convincing.

Survival of the enterprise is not a factor endemic to collective bargaining in the public sector. The public sector is not required to declare a dividend to attract investment capital. Equally, and perhaps more important, the private sector is not subject to external influences unrelated to the market place environment, as is often the case in the public sector.

It would appear that, both by reason of past practice and logic, private sector settlements ought to be the criterion in wage determination for public sector employees.


It has been said, with some validity, that wage determination is not a mathematical science and that the 4.1 percent private sector figure is not precise. Be that as it may however, it is the only official data available to the parties from the Ontario Department of Labour. As such, it has one redeeming virtue; there is no other.

What valid reason then exists for the board to exceed the 4.1 percent standard? None has been demonstrated. The chairman cites a freely negotiated settlement of 4.25 percent in the public sector between C.U.P.E. and Metropolitan Toronto for its inside and outside workers. These employees have the right to strike.

However, the settlement of one individual contract, whatever the reason, is unreliable as a basis for wage determination. Equally unreliable is discretionary data supplied by one party or the other which must be viewed in the context of an effort to satisfy a predetermined purpose.

For the reasons above, I would have accepted the latest available data published by the Ontario Department of Labour and awarded an increase of 4.1 percent.

Respectfully submitted,


George Milley

Sept. 5, 1985

"IN THE MATTER OF AN ARBITRATION UNDER THE CROWN EMPLOYEES'
COLLECTIVE BARGAINING ACT, R.S.O. 1980, c. 108

B E T W E E N :

THE ONTARIO PUBLIC SERVICE EMPLOYEES
UNION

- and -

THE CROWN IN RIGHT OF ONTARIO
(SCIENTIFIC AND PROFESSIONAL CATEGORY)

File No. T/72/84

BOARD:

Martin Teplitsky, Q.C.

G. J. Milley

M. Vorster

APPEARANCES:

On behalf of the Union: Chris Schenk

On behalf of the Employer: W. J. Gorchinsky, Elsie Moolgaoker,
Miriam Irwin, Alan Levy, Rob Scouller
Daniel Rinck, Anthony David

Hearing held August 22, 1985 in Toronto.

A W A R D

The parties have both presented additional briefs in support of and/or in opposition to five (5) special cases. I shall consider each case in turn.

LECTURER, AGRICULTURAL SCHOOL

We are unable, based on the written material, to reach a decision. A hearing will be necessary. Oral evidence will be required. A job evaluation would be helpful. We remain seized for this purpose.

OCCUPATIONAL THERAPIST

The evidence discloses a clear entitlement to a further increase. We would award 3.25% effective July 1, 1985 at each step.

PHARMACISTS

The evidence discloses a clear entitlement to a further increase. We award 4% at each step effective July 1, 1985.

FORRESTERS AND SOCIAL WORKERS

We are not persuaded that any further increase

is warranted in either of these cases. These requests are refused.

DATED the 16th day of December, 1985.


MARTIN TEPLITSKY, Q.C.
Chairman


G. J. MILLEY


M. VORSTER

T/73/8

IN THE MATTER OF AN ARBITRATION UNDER THE CROWN EMPLOYEES'
COLLECTIVE BARGAINING ACT, R.S.O. 1980, c. 108

BETWEEN: THE CROWN IN RIGHT OF ONTARIO
("the Employer")

AND: ONTARIO PUBLIC SERVICE EMPLOYEES' UNION
("the Union")

AND IN THE MATTER OF THE ADMINISTRATIVE SERVICES WAGE
BARGAINING CATEGORY

PANEL OF
ARBITRATION: MICHEL G. PICHER, Chairperson
GEORGE MILLEY, Employer Nominee
FREDERICK TAYLOR, Union Nominee

APPEARANCES:

For the Employer

P. Mooney
W. Gorchinsky

For the Union

A. Todd
B. Hebdon

A hearing in this matter was held in Toronto on June 17, 1985.

A W A R D

This is the arbitration of a dispute between the parties respecting wage rates for employees in the Administrative Services category of the Government of Ontario. Administrative Services is one of nine occupational categories established for the purposes of wage negotiations in the overall bargaining unit of government employees represented by the Union. It numbers some 5,812 employees, who perform a broad range of administrative tasks. These include, but are by no means limited to, the work of probation and parole officers, welfare field workers, property assessors, driver examiners, highway carrier and vehicle inspectors, community development officers, systems analysis officers and translators.

The Administrative Services category is the second-highest paid of the nine categories of employees represented by the Union. In 1984 the average annual salary was \$30,950. The range of remuneration over the 133 active classifications in 1984 is reflected in the fact that employees in the lowest-paid sub-category earned less than \$18,000 a year, while the highest-paid employees earned in excess of \$49,000. In the salary year 1985, the Union proposes a general increase to all rates in the bargaining unit of \$40 across the board. That would produce a 6.4% increase on the average salary in the category as of December of 1984. The Employer proposes an increase

of 3 percent, to be applied as a straight percentage of all existing wage rates in the category.

The general jurisdiction of this Board is described in section 12 of the **Crown Employees' Collective Bargaining Act**, which provides, in part, as follows:

12. (1) The board shall examine into and decide on matters that are in dispute within the scope of collective bargaining under this Act.
- (2) In the conduct of proceedings before it and in rendering a decision in respect of a matter in dispute, the board shall consider any factor that to it appears to be relevant to the matter in dispute including,
 - (a) the needs of the Crown and its agencies for qualified employees;
 - (b) the conditions of employment in similar occupations outside the public service, including such geographic, industrial or other variations as the board may consider relevant;
 - (c) the desirability to maintain appropriate relationships in the conditions of employment as between classifications of employees; and
 - (d) the need to establish terms and conditions of employment that are fair and reasonable in relation to the qualifications required, the work performed, the responsibility assumed and the nature of the services rendered.

The Union cites a number of factors in support of its position. Firstly, it emphasizes relatively positive economic forecasts and, in particular, an expected continuation in the economic growth of Ontario throughout 1985. It cites the overall real growth rate of the Canadian economy in 1984 of 4.2%, after subtracting inflation, and the projection of a 2.6% expansion of the gross national product and gross national expenditure for 1985 by a composite of more than 30 leading economic forecasters. It also cites more recent forecasts, made in the wake of the federal budget, for a growth in the real gross national expenditure of 3.5%.

The Union submits that the Board should be particularly sensitive to the special position of Ontario, and its performance in the economy. In this regard, it cites the statement to the Legislature by the then Treasurer and Minister of Economics on June 10, 1985, relating that in 1984 Ontario's real gross provincial product increased by 6%, the most positive growth rate recorded since 1972. The Union maintains that the employees in the administrative category of the bargaining unit have done their part to contribute to the economic growth of the province, and deserve to share in its rewards.

Next, the Union points to the cost of living and wage settlement trends. It draws to the Board's attention Statistics Canada data showing Consumer Price Index increases of 22.3% from 1981 through 1984. Further CPI figures reveal an inflation rate of 3.7% through the first months of 1985, and a slightly higher rate of 3.9% through April and May of this year, the last

months for which data are available. Noting that the most recent federal budget forecasted an average inflation rate for 1985 of 4.2%, the Union submits that a 4.5% average inflation rate can be anticipated for 1985.

The Union also draws to the Board's attention the pattern of wage settlements in Ontario. In 1984 the Ontario Ministry of Labour statistics on average annual increases in base rates in collective agreements covering two hundred or more employees, excluding agreements with cost-of-living-allowance clauses and construction industry agreements, showed an average annual increase of 3.9% in the private sector and 4.8% in the public sector. While reported figures for the fourth quarter of 1984 were only preliminary, the Union notes that there was a slight increase in the private sector rates of settlement, from 3.3% to 3.5% from the third to the fourth quarter. That is also reflected in the figures for all agreements: the third quarter overall increase is reported as 4.4%, while the preliminary increase in the fourth quarter is 4.5%. The Union maintains that these figures reflect something of an upswing in settlement rates. In further support of its position, it cites a number of settlements in the public sector in Ontario covering nurses, municipal employees, hydro employees and transit workers, ranging from 4.25% to 5%.

A further factor advanced by the Union in support of its position is productivity. It maintains that increased productivity is reflected in more work being done in the same time and more services being rendered by the same number of workers, or fewer. While acknowledging that productivity in the

public service is difficult to measure, the Union maintains that an increase in the productivity of the public sector is reflected in current statistics. Specifically, the Union points to the statement of the Hon. Larry Grossman in his budget presented in May, 1984. The then Minister noted that while in 1975 there were approximately 11 public servants for every thousand residents in Ontario, in 1984 "we are able to provide more and better services with only 9 public servants for every 1,000". Table C-10 of the budget showed improved efficiency over 1978 of 6.9%.

The Union maintains that if the above general approach to assessing productivity is applied to the Administrative Services category, the figures are not, at first blush, so compelling. That is due in part to the increase of employees in the classification of Systems Officer. That is the group of employees who develop and apply computer programs to facilitate information and record-keeping within the government. Their numbers increased from 96 in 1981 to 624 by the end of 1984. The Union argues that it cannot be doubted that the addition of these employees has greatly contributed to the general rise in productivity in the public service. It posits that if their number is subtracted from the overall number of employees in the Administrative Services category, with the balance of employees being compared in relation to the population of Ontario, there has been a real increase in productivity for this category of 4.6% in 1984. While the Union accepts that a portion of the increase in efficiency must be attributed to the introduction of computer technology and more sophisticated work methods, it does not view that factor as sufficient to negate its position on productivity. It argues that new

technologies mean new skills and procedures which may also mean increased stress and hazards to the health of employees. The Union maintains, on the whole, that even if exact mathematical breakdowns are not possible, the advantages of greater productivity which have accrued to the Employer should be taken into account in assessing the appropriate measure of compensation to its employees. It submits that that is also true if productivity is assessed on the alternative basis of dividing the gross provincial product by the total number of people employed in Ontario. On that basis there was a 3% increase in output per person within the province generally. In the Union's submission the employees in the Administrative Services category have made a contribution to that overall increase and should be compensated accordingly.

Lastly, the Union disputes any suggestion that in a public sector wage dispute the employer's ability to pay should be given any significant weight. The Union's representative stresses that in the private sector, where market factors of supply and demand as well as prices, marketing strategies and the general state of the economy have an impact on an employer's revenues and profits, the same factors play little or no role in the financial positions of governments. He further submits that the issue of ability to pay is artificially weighted against the Union in a system which denies employees the right to strike, the truest means to put the employer's ability to pay to the test. The Union submits that compensation in the public sector should be comparable to compensation in the private sector. It maintains that principles of fair compensation should not allow public sector employees in

effect to subsidize the community by providing a public service for less than its true cost or value.

The Union maintains that the government's budgeting process itself determines ability to pay in the public sector. This, it argues, is tantamount to allowing the Employer to define the limits of its own ability to pay: to the extent that the Employer can do so, and argue ability to pay in arbitration as a principal criterion, the independence or objectivity of the arbitration process is undermined. The Union stresses that boards of arbitration should be primarily guided by the criteria set out in Section 12 of the **Crown Employees' Bargaining Act**.

The Union makes a supplementary request with respect to implementation. It asks the arbitrator to order the payment of interest as compensation for any delayed implementation. Specifically, it maintains that the Employer should have 30 days from the date of this Award to implement the wage increase. Following that date, it requests that the order of this Board be to direct the Employer to pay interest at the current prime rate on all unpaid monies. The Union maintains that 60 days, the normal period of delay before implementation, is unacceptably long, and cannot be justified in the age of the computerized payroll. In support of its position it cites the award of a board of arbitration chaired by Professor E. Palmer respecting the 1984 wage increase for the Clerical Services category, dated December 13, 1984. The Board in that case ordered interest on any monies unpaid within 30 days of the award.

The Employer argues that this Board has no jurisdiction to make an award respecting the payment of interest in relation to implementation, delayed or otherwise. Its spokesperson on this issue submits that, absent statutory authority, orders for the payment of interest may not be made against the Crown. He maintains that in those cases where orders for the payment of interest have been made, whether by a board of arbitration or by the Ontario Labour Relations Board, the tribunal has based its award on a finding of wrongdoing by the employer. He argues that that approach has no place in interest arbitration, where the sole issue is the appropriate measure of compensation as a result of an impasse in bargaining.

The Employer forcefully disputes the wage demand put forward by the Union. Its spokesperson on the issue of the wage increase submits that the most appropriate yardstick for this Board to apply is the recent and current rate of settlements in the private sector. He stresses that it is the private sector settlements which are constrained by market forces and therefore provide a more accurate reflection of the state of the economy. In support of that view, the Employer cites the following comments by arbitrator Teplitsky in the award respecting the Service Employees' International Union and 46 Ontario hospitals, made in 1982:

Interest arbitrators attempt to emulate the results of free collective bargaining. As I wrote in the award between the Ottawa Police and the Board of Commissioners of Police dated September 10, 1980 at page 4: "Interest arbitrators interpret the collective bargaining scene. They do not sit

in judgement of its results." If our awards are inflationary, it is ordinarily because the freely negotiated settlements both in the private and public sector are inflationary. One should remember that the vast majority of settlements achieved in Canada are voluntary settlements between the parties without the intervention of an interest arbitrator. Indeed, even in those sectors which are controlled by compulsory binding arbitration, the freely negotiated settlements tend to lead the way. Employers, it seems, overlook their own freely negotiated and inflationary settlements when they criticize arbitrators whose awards mirror these settlements. And these settlements must be followed because the goal of compulsory binding arbitration is to ensure that the parties affected by the loss of the right to strike fare as well, although not better than, those parties whose settlements are negotiated within the context of the right to strike.

To the same effect, the Employer drew to the attention of the Board the comments of Professor Weiler in two further arbitrations. The first is the 1981 award concerning 65 participating hospitals and the Canadian Union of Public Employees, where, at p. 6, the chairman states:

Still I do believe that private sector negotiations should play the dominant role in wage determination, at least as far as interest arbitrators are concerned. If the results of free collective bargaining are to be the norm, we should look to the compensation bargains which are struck by unions and employers who are directly exposed to the forces in the market economy, in whichever direction this standard may take us.

To the same effect, chairman Weiler wrote in the 1981 award for the 46 participating hospitals and the Service Employees' Union, at p. 3:

The implication I draw from this premise is that the key ingredient in interest arbitration must be movements in relative wages. Binding arbitration is very much the exception rather than the rule in Canadian industrial relations. The appropriate standard for decisions in this sphere should be drawn from external collective bargaining between sophisticated union and management negotiators whose bargains are shaped by these real economic forces.

In the Employer's submission, there is little reason to believe that settlements in 1985 will significantly exceed the pattern of moderate settlement rates reflected through the four quarters of 1984. In this regard it cites the predictions of several economic forecasters which contemplate settlements in the 3 to 4 percent range and lower.

The Employer stresses the importance of internal relativities in arriving at an award in respect of wages for the Administrative Services category. Its spokesperson notes that the Administrative category has historically been treated on a comparable basis with the two other highest-paid categories, the Scientific and Professional and the Technical. It notes that the internal equity between these categories has been maintained by the fact that they have received virtually the same increases over the past five years.

It was submitted on behalf of the Employer that rates of turnover can be looked to as a significant indicator of the comparability of wages within the Administrative Services category to like positions elsewhere, both in the public and the private sector. It notes that the overall rate of departures from employment in the Administrative Services category in 1984 was 5.3%.

It maintains that that figure reflects no particular sign of wage inequity or dissatisfaction. It argues that the annual report of the Civil Service Commission suggests no severe recruitment problems experienced within this category, maintaining that that is a further indication that there are no significant disparities or inequities in the overall wage rates being paid.

This Board accepts the general comments respecting the significance of settlements in the private sector in determining awards of wage increases in public sector disputes, reflected in the passages from arbitrators Teplitsky and Weiler, reproduced above. Neither party has suggested that, as a general matter, the employees in the Administrative Services category are significantly underpaid or overpaid as compared with comparable employees in either the public or the private sector. That being so, if the overall objective of arbitration is to award to employees wage gains comparable to those which they might realize through free collective bargaining and the right to strike, it is not unreasonable to assume that their gains would be generally comparable to those freely negotiated in the private sector. Settlements in other parts of the public sector are, of course, also significant, particularly to the extent that they have been freely negotiated. It should also be noted that over the past five years there has been a remarkable closeness between the rates of wage increases in both public and private sectors. That is reflected in the following table of settlements published by the Ontario Ministry of Labour:

WAGE SETTLEMENTS IN ONTARIO

AVERAGE ANNUAL PERCENT INCREASES IN BASE RATES IN
COLLECTIVE AGREEMENTS COVERING 200 OR MORE EMPLOYEES
NEGOTIATED 1980-1984, by Quarter

WITHOUT COLA CLAUSES EXCLUDING CONSTRUCTION

	Public	Private	All Agreements
1980 1st Q.	9.1	(10.9)	9.3
		OPSEU 11.4	
2nd Q.	9.8	10.7	10.0
3rd Q.	11.1	11.7	11.3
4th Q.	10.8	11.1	10.9

Annual	10.0	11.2	11.3
1981 1st Q.	12.5	12.2	12.4
2nd Q.	13.0	12.4	12.8
3rd Q.	13.6	11.5	13.5
4th Q.	13.9	11.0	13.4

Annual	13.2	11.7	12.9
1982 1st Q.	12.2	11.5	12.1
2nd Q.	12.7	10.6	12.1
3rd Q.	10.8	10.2	10.6
4th Q.	6.0	9.4	6.8

Annual	9.6	10.1	9.7
1983 1st Q.	6.6	7.5	6.8
2nd Q.	5.9	7.2	6.8
3rd Q.	5.1	6.5	5.1
4th Q.	5.0	5.6	5.3

Annual	6.1	6.9	6.3
1984 1st Q.	4.5	5.4	5.0
2nd Q.	4.9	4.7	4.8
3rd Q.	5.0	3.3	4.4
4th Q.	4.9	3.5	4.5

Annual	4.8	3.9	4.6

As the foregoing figures reveal, in the category of collective agreements compared, in three of the last five years the private sector settlements slightly exceeded those of the public sector, while in two of the five years the reverse was true. Significantly, there has, overall, been a close relationship between the rates of wage increases in both sectors. That said, however, it remains the conviction of this Board that because of their greater susceptibility to generalized economic forces it is the private sector settlements which remain the more reliable barometer for boards of arbitration awarding wage increases to employees in the public sector. In our view it is also significant that there has been a significant downward trend in wage settlements over the past three years generally. This trend was continued through each of the first three quarters of 1984.

In the Board's view, the overall rate of settlements in the private sector of 3.9% in 1984 is an important factor in its determination of an appropriate wage increase. Projections respecting possible increases in the cost of living, as reflected in the consumer price index, are also significant, albeit less certain. The Union's estimate of an overall inflation rate for 1985 of 4.5% is not compellingly supported in the documentation filed before the Board. As noted above, the percentage increases in the consumer price index through May of 1985 were 3.7% for the first three months of the year, and 3.9% for the following two months.

In the Board's view, the rates of settlement in the private sector also

reflect, in some measure, rewards for productivity. To a substantial extent recent increases in productivity have been achieved in both the public and the private sector by common technological innovations and corresponding efficiencies in working methods. The settlement rates in the private sector do, to that extent, reflect a measure of compensation for greater productivity freely bargained on behalf of employees which can be looked to in determining compensation levels in the public sector. There might, of course, be special considerations attaching to a particular classification or group of employees in the public sector that would justify exceptional treatment. That has not been pleaded in the instant case, however. As a general matter, therefore, we take it that rates of settlement in the private sector reflect some measure of compensation for productivity, and that comparable productivity gains in the public sector will be fairly compensated by an award of wage increases based on current private sector settlements.

Having regard to all of the foregoing factors, the Board awards a 4% increase on the average salary in the category, as of December 1984. Our conclusion is based on the overall rate of settlements of 3.9% in the private sector in 1984, coupled with a projected rate of inflation slightly in excess of 4% in 1985, having particular regard to the somewhat lower actual rates of inflation experienced in the early months of this year.

We accept the Union's submission that the wage increase should be applied on the basis of dollars and cents across the board in this contract year. It is in the interest of both parties to maintain equity and relative stability in

the range of wages paid within the category. Repeated applications of straight percentage increases would have the effect of widening the gaps among the classifications, while the recurrent application of straight dollar-and-cents increases in equal amounts to all employees will result in excessive wage compression. Either of these consequences can be detrimental to the interests of both parties. Both unduly wide wage gaps and wage compression can be avoided either by blending the wage increase in a combination of percentage increases and across-the-board increases expressed in dollars and cents or, alternatively, by substituting one form of increase for the other in successive years. Given that the wage increase accorded to this category was on the basis of percentage in 1984, in the interest of stability the Board deems it appropriate to order an increase in wages on the basis of dollars and cents across the board for 1985. In this regard an increase of 4% to the average annual salary is achieved by an order for the payment of a further \$23.73 per week to the wages of each employee in the category.

The Board does not deem it appropriate to make an order for the payment of interest in the event of delayed implementation, as requested by the Union. In so doing, we should note that we do not accept the position of the Employer that we lack jurisdiction to do so. Nor do we share its characterization of the jurisprudence respecting the payment of interest pursuant to the order of arbitration boards or labour relations tribunals. It is well settled that a board of arbitration or a labour board may make an order for the payment of interest as part of its direction for compensation. It may only do so, however, if its order is compensatory and not punitive. In other words,

the order for the payment of interest is not conditioned on the conduct of the party against which the order is made, but is intended narrowly and exclusively to make the other party whole from a real financial loss it would otherwise suffer. This foregoing approach has been scrupulously followed by both boards of arbitration and the Ontario Labour Relations Board in making compensatory orders of interest where it has been established that there has been a violation of the collective agreement or of the **Ontario Labour Relations Act**, as the case may be, with a resulting financial loss to the grieving party. (See **Hallowell House Ltd. and Service Employees' Int'l Union, Local 183** [1980], Can L.R.B.R. 499, [1980] O.L.R.B. Rep. 35; **Re Air Canada and Canadian Air Line Employees' Association** (1981), 29 L.A.C. (2d) 142 (P.C. Picher); **Re Beckett Elevator Constructors** (1983), 11 L.A.C. (3d) 289 (MacDowell).)

In our view, there is nothing in principle which would prevent a like approach in the awards of boards of interest arbitration, from a strict jurisdictional point of view. Where a collective agreement is freely negotiated, we know of no impediment in law to the inclusion of a provision for the payment of a sum of money, whether calculated as interest or otherwise, in the event of a violation of a condition subsequent respecting the time at which a negotiated wage increase is to be implemented. In that circumstance the parties are free to negotiate either a fixed amount or a formula for the calculation of a sum which they deem to be compensatory of such a violation, in common recognition that increased wages should have been in the hands of the employees at a given point in time, with the value of that money over time

ensuring to the benefit of the employees entitled to it. Alternatively, the parties could freely negotiate a term which simply stipulates a fixed date by which implementation of the wage increase must be achieved, failing which a grievance may be brought for the determination of appropriate compensation by a board of arbitration.

We see no basis in logic or in law why any lesser right should be available to employees who are denied the right to strike and must settle their wage disputes by means of interest arbitration. More particularly, we are satisfied that the terms of the **Crown Employees' Collective Bargaining Act** would permit a board of arbitration to make an order for interest of the kind sought by the Union. There is nothing in the **Act** to suggest that the timetable for the implementation of a wage increase is not a negotiable item, or that that issue, and the related matter of compensation for failure to meet a reasonable implementation date, cannot be a matter of dispute between the parties which can be submitted to a board of interest arbitration. The **Act** provides, in part, as follows:

7. Upon being granted representation rights, the employee organization is authorized to bargain with the employer on terms and conditions of employment, except as to matters that are exclusively the function of the employer under subsection 18(1), and, without limiting the generality of the foregoing, including rates of remuneration, hours of work, overtime and other premium allowance for work performed, the mileage rate payable to an employee for miles travelled when he is required to use his own automobile on the employer's business, benefits pertaining to time not worked by employees including paid holidays, paid vacations, group life insurance, health insurance and long-term income protection insurance, promotions, demotions, transfers, lay-

offs or reappointments of employees, the procedures applicable to the processing of grievances, the classification and job evaluation system, and the conditions applicable to leaves of absence for other than any elective public office or political activities or training and development.

10. If a collective agreement is not realized in accordance with the procedure prescribed by the Tribunal within thirty days after the appointment of the person or persons under subsection 9(2), or such longer period as the Tribunal may direct or the parties may agree upon, or if the Tribunal decides that the establishment of such procedure will not be effective, all matters in dispute coming within the scope of collective bargaining under this Act shall be decided by a board of arbitration in accordance with this Act.

12. (1) The board shall examine into and decide on matters that are in dispute within the scope of collective bargaining under this Act.

It appears to this Board that the issue of the time at which an increase in wages is to be implemented, whether it is negotiated or arbitrated, falls within "terms and conditions of employment" as contemplated in section 7 of the Act. If it is accepted, as we think it must be, that the use of money over time is itself a form of valuable consideration, the issue of the timing of the implementation of a wage increase can be a matter of compensation of some significance to employees. It may, in that sense, be put on the bargaining table as a legitimate term of their collective contract of employment that may be won, lost, reduced or compromised through bargaining. If that is so, it must be equally achievable, or subject to compromise or rejection, by arbitration, just as any other term. Clearly, in that sense, the payment of interest as compensation for delayed implementation of a wage increase can become a matter "in dispute within the scope of collective bargaining under [the] Act" contemplated in Section 12 of the Crown

Employees' Collective Bargaining Act. This is not, in our view, a situation in which an award of interest against the Crown is barred. On the contrary, it is inherently allowed by the provisions of the **Crown Employees' Collective Bargaining Act** (Cf. **The King v. Carroll** [1948] 2 D.L.R. 705, [1948] S.C.R. 126; **R. & Royal Bank v. Racette** [1948] S.C.R. 28; **Re Ogilvie Treasury Board** (1984), 15 L.A.C. (3d) 405 (P.S.S.R.B.)).

In summary, the Board concludes that, by clear implication, the Act allows for the possibility of an order for interest as a form of compensation for delayed implementation. That could be a term or condition of employment available to the parties by agreement or determinable by a board of arbitration. In our view, however, for the reasons elaborated above, any arbitral order respecting the payment of monies in the event of delay in implementation must be purely compensatory. It would appear to this Board that to frame an order for the conditional payment of monies that was on its face punitive, or in the nature of a penalty, and which could not be explained in terms of reasonable compensation for the loss of wages, or for the use of wages, to employees, would be beyond the Board's jurisdiction and mandate. Subject to that proviso, we see no impediment to the Board's jurisdiction to attach a condition respecting the payment of interest in the event of an undue delay in the implementation of an arbitrated wage increase.

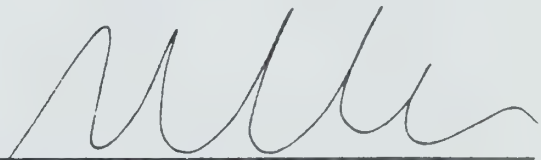
To say that a board has that jurisdiction is not to say, however, that it should be exercised in every case. Regard must be had to the facts, to determine whether such an order is appropriate in the circumstances. In the

case at hand the spokesperson for the Employer maintains that following normal procedures any wage increase determined by this Board can be implemented within 60 days of the award. To some that might seem an unusually long time to implement an increase administered through a computerized payroll. However, the material before the Board suggests a fairly cumbersome process through which the wage increase must pass before it can be put on stream by the government. Moreover, we were not given evidence as to whether, and by what specific means, that process could be made more efficient or responsive to what appears to be a festering source of discontent among employees. Nor do we take it as a representation from the Employer that the current norm of implementation is immutable and beyond improvement in the future. For the time being, therefore, and in the expectation that good faith will be applied by the Employer in working towards a shorter and more efficient period of implementation, we deem it appropriate to order the implementation of the wage increase within a maximum of 60 days of the Board's Award. The Board's Award in that regard becomes a term of the collective agreement, the breach of which may be grieved by the Union in the event of any substantial financial loss to its members.

In conclusion, the Board orders an increase of 4% on the average weekly salary, to be applied across the board on a flat, dollars-and-cents basis to all rates in the category which were in effect as of December 31, 1984, as specifically set out in Appendix A to the award of the prior board of arbitration, dated December 24, 1984, and appearing as Appendix 1 in the submission of the Employer to this Board. In the result, the Employer shall

pay an increase in wages of \$23.73 to each employee in the Administrative Services category, retroactively to January 1, 1985, the increase to be implemented within 60 days of the date of this Award. The Board remains seized of this matter in the event of any dispute between the parties respecting the application of the increase to the existing salary rates, or in respect of any other aspect of the interpretation or implementation of this Award.

Dated at Toronto this 16th day of August, 1985


MICHEL G. PICHER, Chairperson

"G. MILLEY"
GEORGE MILLEY, Employer Nominee

FREDERICK TAYLOR, Union Nominee

PARTIAL DISSENT OF F. TAYLOR

My dissent on the Board's Award is on the matter dealing with interest. The Board has clearly defined its right to award interest, but has declined to provide interest in this instance.

I find I must support the unanimous Award issued under the Chairmanship of Mr. E.E. Palmer, Q.C., dated December 13th, 1984 dealing with a dispute concerning O.P.S.E.U. and Crown/Ontario. The Award provided the Union "interest at the prime rate for any sums of money not paid after thirty days from the issuance of that Award." The Board remained seized and a further hearing was held in Toronto, Ontario on June 29, 1985 to assist the parties in finalizing the agreement.

The same Board handed down a decision signed by the majority on the 31st day of July, 1985 confirming the Board's right to award interest and further provided language dealing with salary rates. The salary rates resulting from the application of the increase set out in 2(a) above are listed in Appendix A of this agreement. It is understood that any mathematical errors which may have occurred in computing these final rates will be corrected once found. Further, if, by result of arbitration the salary rates payable on December 31, 1983 are altered, an appropriate alteration in the rates here set will be made.

The evidence presented to this Board by the Employer has not convinced me that it requires six weeks to provide a revised payroll. It is my respectful opinion that the Award of Mr. E.E. Palmer, Q.C., will cause the Employer to review the existing system and reduce the delay that creates discontent amongst its employees.

I also have some concern about the wage increase of 4 % awarded to the employees in this category. While that increase is acceptable, it is justified only on the basis that the Board has accepted the Union's request to convert a percentage increase into dollars and cents across the Board.

DO NOT REMOVE

IN THE MATTER OF AN ARBITRATION
PURSUANT TO THE PROVISIONS OF
THE CROWN EMPLOYEES COLLECTIVE
BARGAINING ACT, R.S.O. 1980, C. 108

T/74/84

B E T W E E N:

THE CROWN IN RIGHT OF ONTARIO, AS REPRESENTED
BY MANAGEMENT BOARD OF CABINET

- and -

THE ONTARIO PUBLIC SERVICE EMPLOYEES UNION
WITH RESPECT TO THE INSTRUCTORS,
ONTARIO POLICE COLLEGE

BOARD OF ARBITRATION

V. E. SCOTT - CHAIRMAN
GEO. MILLEY - EMPLOYER NOMINEE
FRED TAYLOR - EMPLOYEE NOMINEE

APPEARANCES

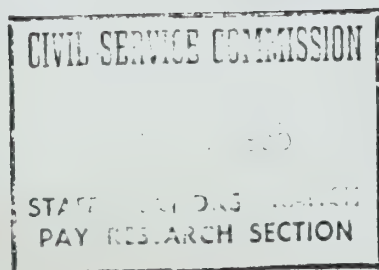
For the Employer - W. Gorchinsky - Staff Relations
Branch

- E. Moolgrokar
- F. Langhorn

For the Union - B. Hebden - O.P.S.E.U.

- B. Brock
- B. Knight

A HEARING WAS HELD IN THIS MATTER
IN TORONTO ON JULY 8, 1985.



This Arbitration arises out of a dispute between the parties regarding the wages of the instructors at the Ontario Police College at Aylmer, Ontario.

In the Ontario Public Service, there are nine occupational categories for wage bargaining. Although this small group of 35 instructors at the Ontario Police College are Civil Servants in the large bargaining unit, their wages have always been negotiated separately, which is in effect a tenth category.

At the hearing, it was agreed by the parties that the Award would cover a two year term effective April 1, 1984 and to expire March 31, 1986.

The position advanced by the Union was to achieve comparability with the O.P.P. over a two year period.

The settlement negotiated between the O.P.P. and the Employer provided the following wage increases:

January 1, 1984 - 4.68%

January 1, 1985 - 4.2%

July 1, 1985 - 2.9%

The Union submitted that historically the settlement achieved by these employees reflected the settlements achieved by the O.P.P.

It was argued that this position was supported by a letter dated December 8, 1977 from a Senior Staff Relations Officer of the Civil Service Commission to the Chief Negotiator of

O.P.S.E.U. wherein it was stated in part:

As in previous years, given the history of negotiations and the relationship to the Ontario Provincial Police negotiations, there is some merit in awaiting the outcome of the Ontario Provincial Police negotiations, which have not yet commenced.

The Employer conversely argued that the Board must take into account the state of the economy and also the restraint program which established a guideline range of 0 to 5 per cent for average increases in compensation for a group with any anomalies within the group being resolved as long as the average does not exceed 5 per cent.

The Board might be more receptive to this position had there not been a freely negotiated settlement with the O.P.P. which provided for wage increases of 12.2% (when compounded) over a two year term plus other cost-related benefits.

On examining the historical relationship between this group and the O.P.P. between the period April 1975 to April 1983, we find that the percentage increases between the two groups vary slightly depending on effective dates with the end result showing that during this period the instructors at the Police College received a total percentage increase (not compounded) of 85.47% while the O.F.P. during the same period of time received percentage increases (again not compounded) of 87.52%. This, in our view, reflects a historical relationship which supports the Union's position of comparability.

The Union contended that in the past the parties have also compared increases to those given to the Administrative Category. In 1984 the Administrative Category was awarded 5% (exclusive of increments).

It was the Employer's submission that a fair and equitable settlement for this category would be the going settlement rate in the private sector, and with that view in mind, submitted that the appropriate Award for the instructors should be:

- 1) A two year agreement to be effective April 1, 1984 to expire May 31, 1986.
- 2) Effective April 1, 1984 - a salary increase of 3.08%.
- 3) Effective April 1, 1985 - a further increase of 3%.

Having given full and serious consideration to the representations made by both parties, the Award of the Board is as follows:

Effective April 1, 1984 - a salary increase of 4.5%.

Effective April 1, 1985 - a further increase of 4.2%.

Effective October 1, 1985 - an additional increase
of 3% (not compounded).

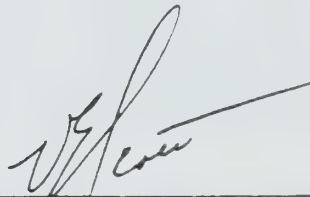
Based on the total compensation costing methodology presented by the Employer, the total compensation costing for the period April 1, 1984 to March 31, 1985 is 6.4%.

While the Board is cognizant of the fact that this exceeds the guidelines of Bill 111, it is justified based on the historical relationship that has been in existence for at least 8 years between this category and the O.F.P.

The parties are herewith directed to cost the Award for submission to the Inflation Restraints Board as provided for in Bill 111.

The Board shall remain seized of and may deal with this matter in the event of any dispute between the parties regarding the implementation of this Award.

DATED at Oakville, this 2nd day of OCT. , 1985.



V. E. SCOTT, CHAIRMAN

"G. Milley" I concur/^{WITH ADDENDUM}dissent
G. MILLEY, EMPLOYER NOMINEE

"F. Taylor" I concur/dissent
F. TAYLOR, EMPLOYEE NOMINEE

2/

T/74/84

RECEIVED

OCT 15 1985

CROWN EMPLOYEES
GRIEVANCE SETTLEMENT
BOARD

In the matter of an arbitration
between
The Crown in Right of Ontario
and
The Ontario Public Services Employees Union
respecting

THE INSTRUCTORS, ONTARIO POLICE COLLEGE

I have read the chairman's award in the above matter and, while I concur in his conclusions, there is a particular aspect which, in my view, merits some consideration for the future. That is the question of comparability of Ontario Police College instructors with the Ontario Provincial Police.

The union's stated objective was to achieve comparability with the O.P.P. over a two-year contract. The relationship of the Instructors to the O.P.P. over the years, they said, has been very strong. With about half the instructors recruited directly from the O.P.P. and the rest from Municipal Police Departments, O.P.P. increases and rates of pay have played a large role in wage bargaining for the instructors. Comparability with the O.P.P., they said, guarantees the ability of the Police College to recruit and retain staff from the O.P.P. and, to an extent, ensure that Police College rates keep pace with Municipal Police Force rates.

Also, reference was made to a letter from a Senior Staff Relations Officer of the Civil Service Commission in 1977 which, it is said, supported the union's position of comparability.

I think that one cannot ignore the fact that, over a period of time, a relationship of varying degrees has existed between the Police College and the O.P.P. in wage settlements.

However, the employer denied, categorically, that comparability exists between the two groups. The instructors, he says, are civilians and not police. Their duties are different, their skills are different and their responsibilities and working conditions are different. Instructors are not required to enforce the law or to make arrests; they are not required to respond to community calls; they are not subject to the dangers inherent in police work, and they are not required to do shift and week-end work.

Although the union asserted that the work of the two groups was comparable, little or no evidence was adduced to prove it. The onus rests with the union to provide proper comparisons between the qualifications, duties, responsibilities and working conditions of the groups to justify their position. This onus was not met.

Unless there is some sound reason to support it, the mere fact that a relationship has existed between the groups, for whatever reason, cannot expect to be sustained indefinitely.

The union has said that comparability with the O.P.P. guarantees the ability of the Police College to recruit and retain staff from the O.P.P. No doubt, the union is well-motivated in its concern about adequate staffing. But it must be recognized that their concern is self-serving. More significantly, however, it is the function and responsibility of the employer, not the union, to ensure that the college is properly and adequately staffed. Moreover, evidence of the employer is that no problem whatsoever, is being experienced in staffing.

One has to question what weight is to be placed on the content of a letter written some eight years ago, in this instance. How relevant is it in the current environment? More important, the letter does not indicate a "parity" relationship between Police College and O.P.P. settlements. It merely suggests that Police College negotiations be held in abeyance to await the outcome of O.P.P. negotiations before the parties proceed. There is no indication of what weight, if any, would be given to the O.P.P. settlement, or to what extent it might influence the negotiations. In fact, the relationship referred to between the groups could cover a range in difference of settlements of any magnitude or dimension.

For the above reasons, it is submitted that no case has been made for parity between the two groups. Although there is evidence of a relationship in wage increases over a period of time, the relationship is not a compelling one and virtually no evidence was submitted to indicate that jobs between the two groups are the same, or in many respects, even similar.

Respectfully submitted,



George Milley

October 10, 1985

T/87/84

IN THE MATTER OF AN ARBITRATION
PURSUANT TO THE PROVISIONS OF
THE CROWN EMPLOYEES COLLECTIVE
BARGAINING ACT, R.S.O. 1980, C. 108

B E T W E E N:

THE CROWN IN RIGHT OF ONTARIO, AS REPRESENTED
BY MANAGEMENT BOARD OF CABINET

- and -

THE ONTARIO PUBLIC SERVICE EMPLOYEES UNION
WITH RESPECT TO NORTHERN AFFAIRS OFFICERS

BOARD OF ARBITRATION

V. E. SCOTT	-	CHAIRMAN
MS. E. McINTYRE	-	UNION NOMINEE
MR. P. CAMP	-	EMPLOYER NOMINEE

APPEARANCES

For the Union	- Joanne Miko - O.P.S.E.U.
	- Daniel Richard - Northern Affairs Officer
	- Jack Sayer - Northern Affairs Officer
	- Brian England - Northern Affairs Officer
For the Employer	- W. Gorchinsky - Staff Relations Branch

A HEARING WAS HELD IN THIS MATTER
IN TORONTO ON JULY 29, 1985.

A W A R D

This arbitration arises out of a dispute between the parties regarding the effective date for the implementation of salary ranges for the new classification standards of Northern Affairs Officer 1 and Northern Affairs Officer 2.

There is no dispute between the parties regarding the rates.

By letter dated November 30, 1984, the Employer wrote to the Union suggesting appropriate salary ranges for the two classifications. The letter also stated in part,

We are prepared to discuss the implementation with you and in accordance with Article 5.8 of the Working Conditions and Employee Benefits Agreement, the salary ranges for these revised classes.

Article 5.8 of the Agreement reads as follows:

- 5.8 When a new classification is to be created or an existing classification is to be revised, at the request of either party the parties shall meet within thirty (30) days to negotiate the salary range for the new or revised classification, provided that should no agreement be reached between the parties, then the Employer will set the salary range for the new or revised classification subject to the right of the parties to have the rate determined by arbitration.

The parties met on January 14, 1985 and agreed upon the rates as proposed by the Employer. However, there was no agreement as to the date when the rates would be effective. The Employer's position was that they would be effective January 1, 1985. The Union rejected this and has requested that the effective date be April 1, 1981.

To support this, the Union filed a memorandum dated April 26, 1982 addressed to Mr. G. H. Waldrum, Chairman, Civil Service Commission, from Mr. David Hobbs, Deputy Minister of Northern Affairs, wherein Mr. Hobbs stated, in part, that the N.A.O. series is seriously out of date and ended up by stating,

Because of this, I felt it important to bring this dilemma to your attention and to ask you to find some way whereby our N.A.O.'s can be assured that the review will be completed in the near future, along with the issue of the retroactive treatment of any adjustments.

Mr. Gorchinsky, in rebuttal, argued that the setting of standards is the sole prerogative of the Commission and not the Ministry.

This position is readily confirmed by two pieces of legislation:

Section 4, Subsection (a), of the Public Service Act which reads,

4. The Commission shall

(a) evaluate and classify each position in the classified service and determine the qualifications therefor;

Also, Section 18-(a) of the Crown Employees Collective Bargaining Act,

18. (1) Every collective agreement shall be deemed to provide that it is the exclusive function of the employer to manage, which function, without limiting the generality of the foregoing, includes the right to determine,

(a) employment, appointment, complement, organization, assignment, discipline, dismissal, suspension, work methods and procedures, kinds and locations of equipment and classification of positions; and

(b) merit system, training and development, appraisal and superannuation, the governing principles of which are subject to review by the employer with the bargaining agent,

and such matters will not be the subject of collective bargaining nor come within the jurisdiction of a board.

It was further argued that Article 5.8 of the Collective Agreement only gives the parties the right to have the rate determined by arbitration. Since the parties have agreed upon the rates to be paid, the Employer suggested that this Board does not have jurisdiction to implement the effective date for the agreed upon rates.

The Board finds it difficult to accept this argument. In other areas where interest arbitration is the accepted vehicle to establish rates of pay (i.e. the Hospital Labour Disputes Arbitration Act and The Police Act), it is widely recognized that the term "wage rates" is broad enough to encompass the concept of "effective date".

Surely had the parties been unable to agree upon the rates, the Board in determining the rate would have also had jurisdiction to determine the effective date. To assume otherwise would, in our view, make Article 5.8 inconsistent with the accepted practice in the field of Interest Arbitration.

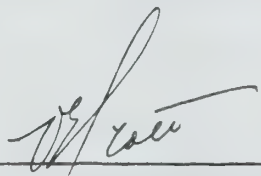
While we agree with Mr. Gorchinsky that it is the sole prerogative of the Commission to determine "when new classifications are to be created or existing classifications are to be revised", it is the time that that decision is made that Article 5.8 of the Collective Agreement becomes effective.

We know from the Memorandum of Settlement between the Union and the Employer (a copy of which was submitted to the Board), that as at April 25, 1984 the Employer had committed itself to revise the classification standards for Northern Affairs Officers. Accordingly, it is at that time that Article 5.8 comes into effect, and it follows that it is from that time this Board has jurisdiction.

Having considered the submissions of the parties and in view of the limited jurisdiction placed on this Board by Article 5.8, it is the Award of the Board that the salary ranges for Northern Affairs Officer 1 and Northern Affairs Officer 2 shall be effective from the 25th day of April, 1984.

The Board shall remain seized of this matter in the event of any dispute between the parties in relation to any aspect of the interpretation or implementation of this Award.

DATED at Oakville, this 12th day of November , 1985.



V. E. SCOTT, CHAIRMAN

"E. McIntyre" I concur with
MS. E. MCINTYRE, UNION NOMINEE addendum

"P. Camp" I dissent (see
MR. P. CAMP, EMPLOYER NOMINEE attached)

DISSENT

Re: T/87/84 Northern Affairs Officers

I have reviewed the award in this matter and find that I cannot concur with the findings, namely:

"Having considered the submissions of the parties and in view of the limited jurisdiction placed on this Board by Article 5.8, it is the Award of the Board that the salary ranges for Northern Affairs Officers 1 and Northern Affairs Officers 2 shall be effective from the 25th day of April, 1984."

It is the view of this member that this Board did not have limited jurisdiction to deal with the matter of retroactivity, in fact by reference to Section 18 (a) of the Crown Employee's Collective Bargaining Act and specifically to Article 5.8 of the Collective Agreement this Board had no jurisdiction.

The significant flaw in this award is that in searching for a date, the result being April 25, 1984, at this date the new classification standards did not exist. The Memorandum of Settlement dated April 25, 1984 (copy attached) provided that the Employer would provide the revised classification standards to the Union on or before December 1, 1984. Surely this reflected the Union's acceptance of the fact that it does take time for the Employer to do such work. It follows, that if this time to do the work April 25, 1984 to December 1, 1984 presented a problem of payment to the Union, a provision dealing with such would have been a part of this Memorandum.

For whatever weight it may have been given in arriving at the decision to pay retroactivity, this member is concerned with Page 3 of the award which states:

"In other areas where interest arbitration is the accepted vehicle to establish rates of pay (i.e. the Hospital Labour Disputes Arbitration Act and the Police Act), it is widely recognised that the term "wage rates" is broad enough to encompass the concept of effective date".

To apply this to salary ranges as referred to in Article 5.8 of the Collective Agreement surely goes beyond any intent or interpretation negotiated by the Parties.

In conclusion I must agree with the actions of the Employer in this matter in that:

- (1) The classification standards were reviewed between April 25, 1984 and December 1, 1984 as required by the Memorandum of Settlement.
- (2) The resulting standards and salary ranges issued to the Union November 30, 1984.
- (3) Met with the Union January 14, 1985 with agreement on the salary ranges.
- (4) Made the new classification standards and salary ranges effective January 1, 1985.

For these reasons, I respectfully dissent.

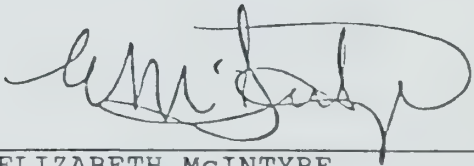
A handwritten signature in black ink, reading "Peter D. Camp". The signature is written in a cursive style with a large, sweeping initial "P" and a long, horizontal stroke extending from the end of the name.

P. D. Camp, Member

A D D E N D U M

I have concurred with the Award of the Chairman in that I think it is the legally correct application of this Board's jurisdiction. However, based on the commitment made in writing by David Hobbs, Deputy Minister of Northern Affairs, it would, in my opinion, be the moral obligation of the employer to make the salary adjustment retroactive to April 1, 1981. This obligation arises from the letter quoted in part by the Chairman in the majority award (at page 2): In that letter it is also stated as follows:

"The Ministry was also informed that the new series would be implemented no later than April 1, 1982, and that for the N.A.O.'s any salary adjustments would be retroactive to April 1, 1981."



ELIZABETH MCINTYRE



ONTARIO
CROWN EMPLOYEES

GRIEVANCE SETTLEMENT BOARD

180 DUNDAS STREET WEST, TORONTO, ONTARIO, M5G 1Z8 - SUITE 2100

TELEPHONE: 416/598-0888

MEMORANDUM OF SETTLEMENT


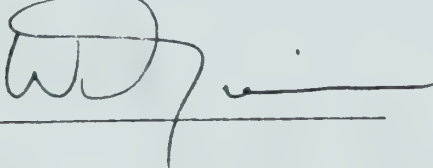
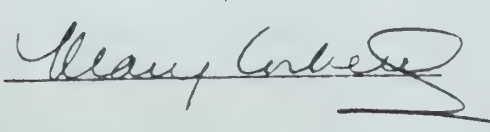
OPSEU and THE MINISTRY OF NORTHERN AFFAIRS

Re: GSB 644/83 Grievances of Cathy Jensen, et al


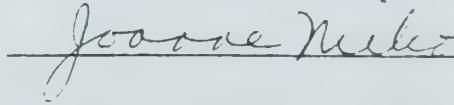
The parties hereto agree to the following terms as full and final settlement of the above captioned grievances:

1. The Employer undertakes to revise the classification standards for Northern Affairs Officer and to provide the revised classification standards to the Union on or before December 1, 1984.
2. In the event that the revised classification standards is not provided to the Union by December 1, 1984, this Settlement shall be deemed to be null and void and the captioned grievances shall proceed to a hearing before the Grievance Settlement Board at the earliest possible date.
3. The Union agrees to recommend this Settlement for acceptance by each of all of the Grievors. In the event that any Grievor has not signed this Settlement or has not authorized the Union to sign on his/her behalf, by May 4, 1984, this Settlement shall be deemed to be null and void.
4. The Union and the Grievors agree to withdraw the captioned grievances subject to the conditions set forth above.

On behalf of the
Employer:

On behalf of the Union and
Grievors:

Witnessed at Toronto, Ontario this 25th day of April, 1984 by:

